

Roger Stoddard  
1813

Rever and Gould's  
Lectures

Pleas and Pleadings

New Trials.

Writs of Error

and

Practice in Connecticut.

Office

*A*  
*System*  
*of*  
*PLEADING*

*taken from the*  
*LECTURES of*

*JAMES GOULD ESQ*  

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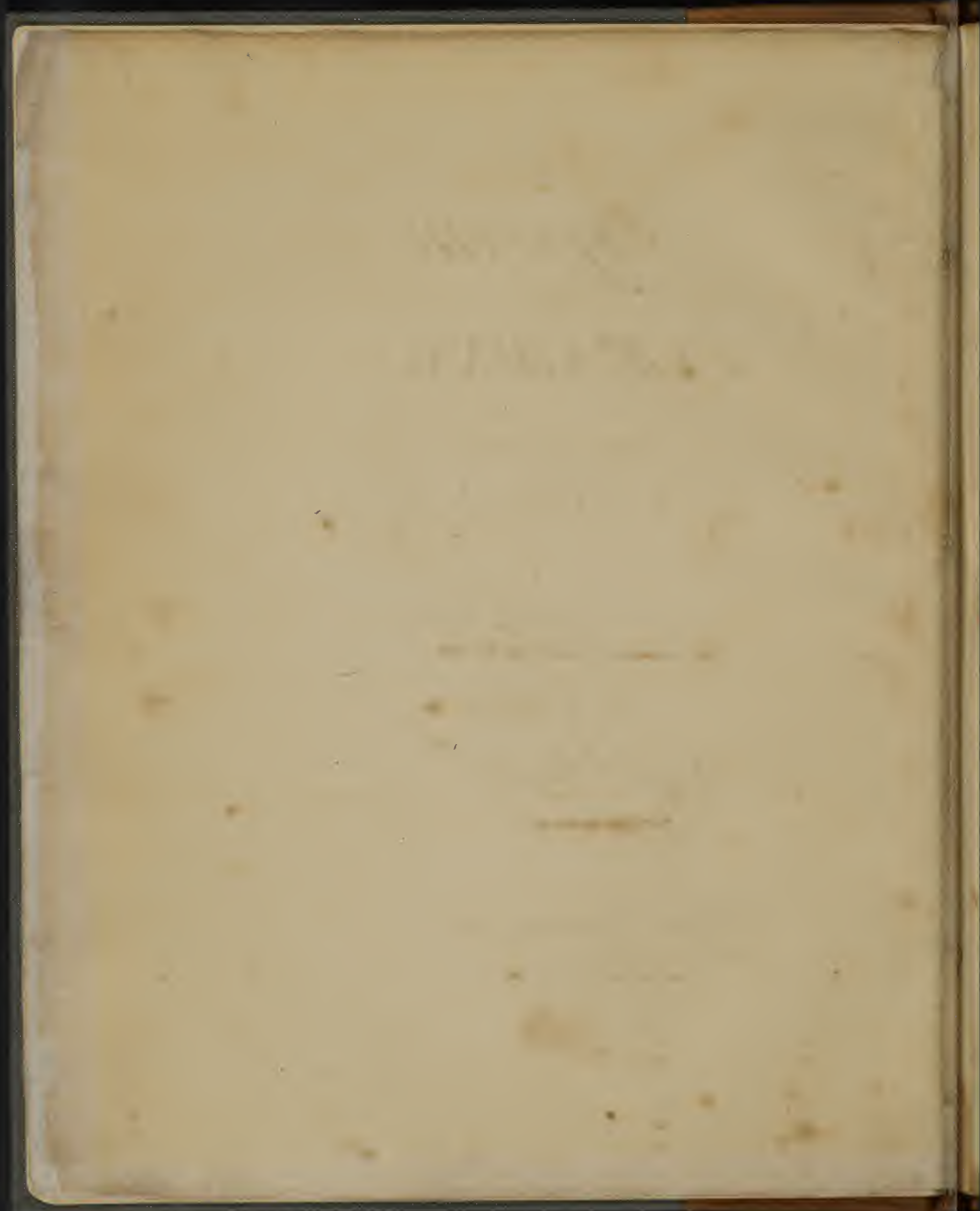
*by*  
*Roger T Baldwin*  

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*Litigiana January 1813.*  

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## Mans and Pleading

Pleadings are the mutual allegations between the plff  
and def put into legal form and set down in writings

Anciently, pleadings were delivered into Court <sup>3d Ed. 295</sup> ~~or~~ <sup>Law. 10 Co. 132.</sup>  
and then taken down by an officer of the Court. Hence  
in the ancient Norman French they were called the  
Parol

From the time of the Conqueror the pleadings were in <sup>Law. 29</sup>  
Norman French till 36. Ed. 1. From that time until the 5th Ric. 1  
in abridgement of Court work, they were in Latin; <sup>3d Ed. 317-318</sup>  
after this it was known they were allowed and become more English.  
The extension of King Charles however I find when a plea being made was  
allowed or concluded until the year 1754 when the Stat. 4 Geo. 2. c. 26  
they were again ordered to be in English.

The true nature of pleadings now is better understood <sup>Law. 29</sup>  
by this definition. They are all that either party to a suit allows  
for himself in Court with respect to the substance of the  
cause, and the mode in which it is carried on in other words the setting  
forth of those facts or arguments which show the justice or injustice  
of the other side's demand or defence. It is a kind of pleading  
and the cause is known to both sides at all times. Hence and with  
freedom and present the cause with convenient brevity.

It has been said by some learned men that the best kind of  
pleading is that which is founded in fact and sense and in the truth.

and thus the Prætor more or more than approached.

The rules of Ulpianus constitute a system of Logic.

Every word declaration and every case considered.

- 3<sup>rd</sup> Intuition is a good sublimation. It contains by implication at least the elements of a good contemplation. "You see" remarks of St. Augustine "that the rules of good Ulpianus are founded on exquisite logic". This may be well illustrated by a familiar example. In a case, quædam causa, lego "The Ulpian declaration absolutely expressed words from the Ulpian 'Against him who, for the sake of his own land I have a right to recover damages'." "The Ulpian has for the sake entered upon my land." "Therefore I have a right to recover damages as a Ulpian the Ulpian." "The Ulpian has for the sake entered upon my land."

The first or major proposition is not usually expressed in such explicit or precise particular customs. It is not always minor be. For the Ulpian are supposed not to know particular customs. Where a Ulpian custom is thus stated the existence of that custom is treated as matter of fact. The rule prescribed by it is matter of law. The general principles of law the judges are supposed to take notice. It is not therefore be unanswerable to show them.

The first or major proposition contains the local principle, one which the Ulpian Ulpian. The minor proposition contains the fact, to which that principle is to be applied in the particular case. The conclusion is the inferior of law from the application of that principle to the fact.

The minor proposition is regularly denoted by one clause in any usually in a declaration or motion in action judicium.

The law cannot be shown by an issue in fact or ver-  
dict. It is a question of law and not a question of fact. It is not a question of fact.

When however a particular custom is declared in the ex-  
istence of that custom is decided by an issue in fact, but the  
will prescribed by it is a question of law.

In the other hand the minor proportion is decided by  
an issue in fact as by the general issue, i.e. not guilty or  
which is a technical method of bringing all the material at-  
issue in the declaration.

The conclusion, I it is supported by the premises con-  
sistently be decided by the allegation some new matter of evidence.  
as for ex. a release will admit the major and the minor  
but decides the issue.

This plea of a release forms another complete system  
in substance though not in technical form. I have the  
just system as stated. The defendant releases, he releases the  
defendant who has a new discovery release, it shall be lawful of the action  
for the release. The plea release shall be lawful of the action.

as the conclusion is to be decided it is to be decided  
in a new system. until an issue is braced in fact  
or in fact.

as it is released that all release is a question  
of fact.

The first law of a case is the case is a question  
of fact, directed to the issue to compel the allegation.



Plas and Pending

3. 3. 273

50.178  
600 p. 456

600 p. 456

2. Feb. 47. day of issuing the original writ.

Par. 233

2. Rev. 160

Box 454

In the Court of Ships, Bunch, however the vision is not considered to be commenced until the bill of lading is filed.

or the bill in the 7<sup>th</sup> of pounds on a lottery and is more prudent to  
bring the def into act who may then be charged with paying the bill charges

The case, however, the writ and declaration go together  
In many cases, in the 2<sup>nd</sup> the rule is the same.

1. *Pratt* 408. A Suit in Bond, is not consid<sup>d</sup> as commenced, & all  
her process, until the writ has been served upon the deft.  
Hence it has been determine<sup>d</sup> that a tender by the deft. of  
the amount of the debt, after the date of the writ, and before service  
is suffic<sup>t</sup>, without tendering the cost of the writ.

Feb. 1866. The Cause of action must always exist at the date  
of the written instrument or mandatory letter if signed in the name of the  
Executive, State, or People and signed in Cont. by any magistrate.

6. 7. 17.

3. 31. 203

Lower 75.

2) Inner shape of the blades is the *Aciculae* count.

He will do us <sup>the</sup> best service.

238/293. The Declaration Laurens is but an unqualified declaration of the  
will, without all necessary circumstances, at the place &c.

Feb. 11. 36

Feb. 21

A word like *glaciation* then implies the *ice action*,  
the Latin word *glaciation* is now in collection.

It is known as well known, and the celebration is very good  
 Apr. 16. At the auction the day after the war, the day after the  
 which the day makes to fortify his count. In the morning  
 the day after the day, what will support the day after the

## Pleas and Pleadings

5

the first steps of the pleading, which follow the count is the defence, and the defence has no more to do, until the court has made his answer.

The pleas of the defence are divisible into two kinds: 3 D. 331.  
1. Pleas in abatement. 2. Pleas to the action.

1. Pleas in abatement are such as tend to delay the suit, by questioning the mode in which the remedy is sought, rather than the right of action.

Then pleas in abatement are of 3 kinds: 1. To the jurisdiction.  
2. To the disability of the plaintiff. 3. In abatement.  
Many writers indeed make a more minute division; 3 D. 331.  
but this is most convenient, and is included all the minute divisions.

Pleas in abatement are sometimes termed collateral pleas in abatement; but there is a very difference between them. Pleas to the jurisdiction or disability both in form and substance, fringe pleas in abatement.

2. Pleas to the action, denies the cause of action itself; 3 D. 302. a  
they are anterior to the count, and the cause of action never <sup>37.0</sup>  
<sup>113</sup>  
<sup>130</sup>  
<sup>140</sup>  
may be denied in denying the plaintiff's allegation, or by conceding and reversing them, or by an estoppel, which within the verdict was admitted, but interposes an objection to the plaintiff's machinery the avowment which he has made.

Pleas to the action are of two kinds: 1. General Issue. 3 D. 315  
2. Pleas in law, expressing an objection and avowment.

## Plead and Pleading.

avoidance or of stoppage. Then says the 1st of action.  
The 1st's right of action may be denied in a demur-  
rer; but this is not properly classed among Plead, to the  
4th ed. 29 action, for it is not in strategic a plea, but an exce-  
p-<sup>130</sup>tion, for not pleading. This is manifest, from the Exph. of 1st form  
of a demur-<sup>130</sup>rer.

It is not therefore a plea to the action.

Having thus explained the nature, and described the  
subject of pleading, it may now be well to attend to  
some of those general rules which are laid down in the  
books.

### Rules applying to pleading in general

In all pleadings, two things are most say, 1. That  
the matter be sufficient, and 2. That it be expressed according to  
the forms of law. The omission of either of these, is a defect in the  
plea, — of the former, it is a defect in substance; — of the latter,  
in form. All faults in pleading, are reducible to these two.  
and the existence of either, is a good cause of demurrance.

It will be perceived from what has already been observed, that  
in pleading, it is only necessary to state facts, and as the  
case may be, conclusions from them. In other words, no more  
is necessary, than to state facts as they actually exist, or as they  
exist by fiction and a presumption of law.

When it is said that it is not necessary to state facts and  
as the case may be, conclusions from facts, it is not meant that  
it is ever necessary to state conclusions of law, except in

West. 164

Law. 683

Law. 48.

Comp. 684

5 East 275

Cont. 11. 275



in a promise, a promise is made to do or not to do  
 that fact is alleged as fact (to the law of Foreign States)  
 Consciousness of fact are themselves, fact  
as fact and not as conclusions of law. To say that  
 a statement is an implied admission that the fact stated is a  
conclusion, which is a fact is like saying the fact is  
 the fact, which is true, there is no promise. The fact  
 allegation is a conclusion from the fact stated, which  
 it is necessary to state. But it is alleged as matter of fact  
 and not of law. If to such a statement in the fact the  
fact admits he admits an actual promise, which shows  
 that it is considered as matter of fact, though it is not  
 as to fact and presumption of law.

It is a general rule that all statements should be  
 not only a conclusion but also a fact.  
 It is never sufficient to state evidence of a fact, the fact  
 itself must be alleged. If you say to the fact that  
 he promised that the fact admits, this is not a fact, he  
 must say that "he promised" is of the fact admits, he  
 has been written evidence to the fact admits is, which  
 is promised as fact the will not be a fact admits will not  
 a substantive admission than he admits admits. There is  
 a material difference between an admission of evidence  
 and substantive admission.

It seems to be settled since that the fact admits admits  
 and fact are sufficient to admits to make an admission  
 that the fact admits is a case where a fact admits

1 Bound 66 vol  
 1378  
 30 Let 89. a. 7  
 1 Rol 106.

4, 600 22.  
 75  
 76  
 13  
 32  
 134  
 10 vol 28  
 2 vol 73  
 60, 8 303.  
 1, 1000 2, 74  
 300.

## Pleadings: Pleadings:

2. 2nd ed. 7.  
1st ed. 10.  
2nd ed. 10.  
3rd ed. 10.  
4th ed. 10.

It is a general rule that the pleadings must be made at such a time and place, as may be ordered. Though it is usual to make a formal averment, this is held to be sufficient.

The general rule however, that the pleadings must be direct and not argumentative, requires some qualification. What will be noticed under the head of "Declaration." This according to the general rule the word "whereas" should not be sufficiently positive used in some cases it has been held proper. Indeed it may be derived from the authorities that in modern times the rule has been relaxed.

Each party admits so much of his adversary's allegations as he does not deny. This is perfectly reasonable and necessary. Each party has a right to deny the allegations of the other and if he omits it he is held to be conceding as much as he does not deny. Indeed, this is so in English law. If the party denies the minor propositions in the syllabus of his adversary he admits the major, if he denies the conclusion, he admits both the major and the minor.

2. 234.  
3. 313.  
4. 313.  
5. 313.  
6. 313.

The pleadings of each party shall be construed most strongly against himself, because it is supposed to make out his own case. If therefore his allegations are unavailing they shall be construed in that way which will be most unfavorable to himself.

Whenever a traversable fact is pleaded the general rule is that it must be pleaded with time and place, a declaration in a traverse it must be shown that the fact is true.

Phonetic Phrases

This is a general rule: but as the reason as to the two re-  
sources, some, and place, is different. The rule as  
to time was made for the attainment of certain to each. Lives 88-90  
88-90  
Lives 88-90  
because some is so it may have been a time in the  
period some so that perhaps the place of time is not  
known upon it. The reason of the rule is a place is  
place is that some is no matter of fact could be true  
but time is to be taken from the script board, - not from  
the script board but script board. It hence becomes script board  
the place is to ascertain where the time was to be.  
The attainment of script board is not a time board.  
The time board is not a time board but time board.

The number, quantity, or price need not be truly stated,  
except where a mistake in that would work a variance. Lives 48.  
Some number is time board but time board  
except where. In script board, for example, in script board  
contract, the number, quantity and price need not be  
stated time board will be a variance, as if the time board  
is upon a promise to pay 100 when in truth, the promise  
was to pay 99 there is a variance, and the time board is  
bad. But on the other hand, if a man had entered on  
my land and time board time board. Since time board time board  
with time board time board and time board time board.

The time board is not a time board time board. Lives 42,  
43, 44  
45, 46  
47, 48  
49, 50  
The time board is not a time board time board.  
The time board is not a time board time board.



Pleas and Pleadings

It is said also, that every thing should be, pleaded as a reason  
into its local special application. As if our defendant

4. Pac. 100  
Crup. 599  
1. R. 445  
2. R. 1036  
2006  
Wheat. 152  
1. Law. 479

should make a plea to his covenant, it must not  
be pleaded as a plea, for it can only operate as a re-  
lease. If a tenant for life makes a lease to him in reversion  
it should be pleaded as a surrender. If a creditor covenants  
not to sue his debtor, it should be pleaded as a discharge  
and not as a covenant for it cannot so operate. For is  
one thing in form and another in effect, it should be pleaded  
as according to the letter.

This rule however, ought not to be pressed so imperatively  
by, for though the mode of pleading is prescribed as it would  
be more dangerous, yet Mr Goulds conceives that instruments  
may be pleaded as they are, for it would be strange  
if the Court could discover their operation when they are pleaded  
in evidence, and decide accordingly and not be able so  
to decide when they are pleaded on record. In this regard  
some years ago Mr G. supported the opinion which had  
been given, and he has since found that it has been so  
decided in the Bank Pleas in Expt.

2. R. 11.

That which already appears on the record need not  
be averred. The reason is obvious. Neither is it required  
to allege that, which appears by necessary implication.  
In the classical illustration of Lord Coke, "hunc pleum  
et de nunc Capitulum hunc" and that everyone knows  
that in Pleas an avow of non denies to be averred or aver  
that it is within the time of limitation for it appears by implication.

4. R. 283  
7. R. 20  
1. R. 54  
1. R. 25  
2. R. 77

Another rule, which seems to amount to no more than the former, is that all necessary circumstances implied in two facts which are alleged need not be stated.

Co. L. 308b.  
Laws. 4P.

Thus when one pleads a judgment it is not necessary to aver livery and seisin, for this is the essence of a judgment.

What is admitted by the parties in pleading cannot be contradicted even by the verdict of the jury. They may admit whether they please and as between them it cannot be called in question. And so far as the jury attempt to contradict it, their verdict is void. For it is their province to decide only the issue which is presented to them.

L. 1000. 2  
Sul. N. 209.  
Laws. 4P.

A general estate in fee simple may be generally alleged. The party need not show when or how it commenced. But when the estate is less than a fee simple the time and manner of its commencement must be shown. If a party would avail himself of a fee simple, it is enough to say, that at such a time he was seized or had of an estate for life, he must show how and from whom. The reason is that an estate in fee simple may commence by more matter of fact as by a tort, disseizin &c. But a particular estate cannot be created in this way. It always commences in such manner as to involve matter of law as by fine recovery, and on this subject must be put upon the record, with the submission of the execution of the writs of which the Court and not the jury are to judge.

Laws. 4P.  
2d Pa. 533.  
3 Wils. 72.

## Plas and Pleasures

There is a great dissimilarity between immaterial, and im-  
pertinent averments.

An immaterial averment, though unnecessary, relates to the  
point in question, so that a failure in proving it, would occa-  
sion a variance.

An impertinent averment, is altogether foreign to the point  
in question; and an omission to prove it would not occasion  
a variance. For example, A brings an action against B for tak-  
ing all the oxen of his tenant from the land, so that en-  
ough was not left for the payment of rent; and alleges  
that the rent was payable quarterly, which is not proved.  
Now this averment was immaterial, but it was not imperti-  
nent for it related to the manner in which the rent was to be  
paid, and he must have alleged that rent was payable.  
The Court held that the Plff was bound to prove that rent,  
and that an omission would occasion a variance.

In the other kind where the averment is altogether im-  
pertinent it need not be proved. As if the Plff had al-  
leged that at the time the def had on a red coat; this would  
be totally foreign and impertinent.

The distinction which has been made between immaterial  
and impertinent averments, leads to an important re-  
sult, viz. that the former must be proved as laid, but the  
latter need not be. Answers are often given in deter-  
mining whether an averment is immaterial or imperti-  
nent.

The following rule will form a good criterion.







Heas and Pleading

Not an universal rule of business that the party need not allow more than will amount prima facie to a sufficient cause of action or ground of defence. A declaration or plea, then, which is presumptively sufficient until something be shown to the contrary, contains not that is necessary. Now it follows from this that neither party is bound to anticipate, and to estimate all the pros & cons which the other may give. For clearly, in an action on a contract it is reasonable for the def to take the contract and the promise of the pl without denying that it was given, and to measure the influence of the pl by an admission consideration; or to take in secret as the case may be.

5<sup>th</sup> Jan 1897  
24<sup>th</sup> 1900  
Comm. de. the Court  
G. 82. G. 37.

of the declaration in the material part, and the defect supposed  
is even that fact in the pleading the defect is cured, for now it  
appears on the record that the bill has a right of action. Thus  
in an action of trespass for taking an ewe hog, the bill omitted  
in the declaration to state that it was taken from his owner,  
but the defect was cured by the plea of the defendant who admitted  
that he did take it from the bill, but endeavored to avoid  
the liability by showing some other matter. Had the defect been  
mended the declaration would have been bad.

It is another general rule - that more smaller, although in  
 some stages of the glaucous after the de-vascularization must com-  
 mence with a verrucation. "the he is 70 up to 1000."

There is an exception to this rule indeed excited by that  
 5. Geo. II relative to the plea of Bankruptcy <sup>but</sup> but that is  
 almost the conclusion to the matter. <sup>But</sup> <sup>the</sup> <sup>plea</sup> <sup>however</sup> <sup>is</sup> <sup>not</sup> <sup>admitted</sup> <sup>in</sup> <sup>which</sup> <sup>we</sup> <sup>have</sup> <sup>no</sup> <sup>country</sup> <sup>and</sup> <sup>on</sup> <sup>the</sup>

Then our business

principles of the Commonwealth is a joyful assurance

With regard to the necessity of concluding an allocation of some  
matter with a verification it is to be observed that it is

the established habit of having the pleadings

open so that the adverse party may answer once in such cases <sup>150</sup>  
never as to pleas. The law might have established <sup>152</sup>  
the mode of having open the pleadings, or as well as this <sup>310</sup>

such as it is now established, the rule must be adhered

to. It is asked why the pleadings must be thus left

open? I answer, for this reason. But each party

may have an opportunity of meeting the allegations

of the other in any of the three ways which the law allows

viz either to deny them, 2. by confession and avow-

ing or 3. by demurring. If he who alleges new matter

meets the defence to the contrary, the other must be de-

ferred to a verdict to answer or be pleased. If he avows

or confesses to the contrary, he must answer the allegations, by plea-

ding the defence which constitutes the country, or he

may tender an issue in law, by a demurrer, which constitutes

to the court, or he may make a special plea in law con-  
fessing the facts and avowing or denying new matter, which

must be proved with a verification. But the party may

have an opportunity of replying. If the party in his reply

denies the facts, the issue in law, or demurrer, or the tender

an issue either in law or in fact. But if he admits it and

he is not to be allowed a release, but avows that it was

not by force, then he must conclude with a verdict

or be allowed a release, then he must conclude with a verdict

or be allowed a release, then he must conclude with a verdict

or be allowed a release, then he must conclude with a verdict

## Plea and Pleading.

tion, and so on through each successive plea so of the first  
 answer until an issue is found. The 1<sup>st</sup> answer to  
 a plea in bar, is called a replication; to which the de-  
fendant, the plff surrejoins; the de<sup>f</sup> rebut; and the plff  
supplicates. No train of pleadings has ever yet been  
 carried beyond a supplicatio; nor has the ingenuity of  
 the profession, though much exercised, been able to fan-  
 cy a case, in which that could be possible.

Each successive plea or in the pleadings of each party,  
 must follow what he has previously done.  
 3 B. & C. 310. In his replication the de<sup>f</sup> fortifies his declaration, by answer-  
 ing the plea in bar, which attacked it. So the rejoinder  
 supports the plea in bar, by destroying the replication; and  
 the surrejoinder supports the replication by destroying  
 the rejoinder and thus fortifies the declaration. This is the  
 more particularly considered under the head of departure.

The judgment of the Court or rather of the Jury, is always  
 given upon the whole record, and will attach upon the first  
 defect—on the first defect in substance, whether noticed  
 by the adverse party or not, and on the first formal de-  
 fect if exception was taken to it. Upon the declaration to  
 be ill and so also the plea in bar to which the plff surre-  
 joins and answers, as against the de<sup>f</sup>, for a frivolous  
 plea in bar, may be good enough for a bad declaration.  
 The objection remains in time. The enquiry is whether the  
 de<sup>f</sup>, in return to the error in substance, has taken a new  
 mode of action to require a good plea in bar.

10 B. & C. 200.  
 8 Co. 120. 133.  
 4 B. & C. 7. 131.  
 1 B. & C. 173.

There are several expressions in the general issue, I will now treat more particularly of pleadings in the order in which they have been distributed.

Declaration.

The declaration, being the foundation of the suit must show all that is essential to the right of action. As Lawrence, 1000 and sufficient must be his cause of action, he cannot recover unless it is shown in his declaration. Hob. 189.  
Plow. 84.  
Bull. 170  
Lancr. 68  
He may come before without it, but what is contained in that. For the moment is necessary allegations is probable, account to the things alleged and proved. As the defendant is not obliged upon to answer to things which are not alleged.

It follows, therefore that if any material fact is not alleged the plea must fail.

And if the declaration has all the material allegations, yet it contains matter which shows that the plea has no cause of action, he can not recover. It is true that a positive fault is not necessary, faults in pleadings are, as usual. Lancr. 397.  
Bo. 24. 25.  
Plow. 84.  
Bo. 3. 5. 4.  
Objection. But if such fault is made by the plea, he is not destroyed what would otherwise have been good. As if in Walter, London, the plea the plea in reciting the date reads as after the suit was commenced or suppose it appears from the declaration that the suit was commenced before the day of payment arrives the declaration is bad. If in fact the suit was commenced before the day of payment arrives, the plea must inevitably fail. But if it was



is void by mistake. The jury may amend, otherwise it is demurrable. To also, where the plaintiff sues for an entire and indivisible thing, if it appears that he has no claim for part, the declaration is ill. But there are some practical directions on this subject which are best explained in the book cited in the margin.

The omission there of any thing which is of the gist of the action, destroys the right of recovery, and is an incurable defect. The rule of the relation is that without which, the plaintiff has no cause of action. It is not necessarily confined to one simple point or fact, for where the right of action depends on a number of connected facts, each one of the parts of the action in the absence of each, would prevent a recovery. Now, in England, not only the pleading, but the pleading conclusion of the part of the action. So in Scotland, not only the pleading conclusion in the pleading and conclusion. Indeed, whatever comes within the substance of the declaration, so that without it, there is no cause of action is the part of the action. It is not sufficient to say incurable, incurable, incurable, or incurable.

And whenever there is an omission of any thing which constitutes the part of the action, the defendant may take advantage thereof. It is not only by a demurrer, but it is also by a verdict of judgment, for a fault of this description is incurable. This rule is better explained by Lord Mansfield in the case of Butcher v. Aspinwall in Argyll, than in any other place.

Every declaration must contain sufficient certainty, that is to say, the circumstances must be certain, and not leave an in-

Certainly.

# Plas and Blasing Declaration.

19.

infinite. This rule is intended to avoid ambiguity. There are various reasons why the declaration ought to be certain; - 1. That the def<sup>d</sup> may know what to answer. 2. That a regular issue may be joined and found; 3. That the Court may know how to give judgment; and lastly, which is in the main, that the def<sup>d</sup> may be enabled to plead his judgment to any subsequent action for the same cause. This rule is tender to the parties, time, place, and subject matter, that is to say, all these must be described with such certainty as to identify each.

Law. 52.  
57.  
Co. lit. 348. a  
4. Rep. 8.  
Plas. 84.  
122.

As to matter of inducement and aggravation, however the rule is left strict. This I assume to explain what is meant by the terms inducement and aggravation.

Inducement

Inducement is matter of introduction to the principal subject, which yet is necessary to be alleged to explain or introduce it. As for example, in an action for a nuisance the averment that the def<sup>d</sup> owned a house or which was injured by it, is matter of inducement. The act of the action is the creation of the nuisance thing. The inducement is necessary to show how it affects the pl<sup>ff</sup>. These matters of inducement almost always come in under a "whereas" and are not traversable. In reading precedents of writs and declarations, it may possibly be known, that those allegations which come in under a "whereas" are matters of inducement and are not traversable. For nothing is more certain but the act of the action.

Law. 66.  
67.

Aggravation

Matter of aggravation, is that which shows the circum-

## Phas and Reading: Declaration.

Lew. 73.

circumstances of exorbitance, rather than the principal fact  
 contemplated of law which is the gist of the action.  
 It is so said because it is introduced to aggravate the dam-  
 ages, as when in a writ and return it is said that the debt  
 and other exorbitance, generally, the alia exorbitantia are non pro-  
 nassia. It is never used in a return or counterclaim. In so  
 doing, in torts whatever is not the gist of the action, but is  
 introduced merely to make the act of the debt more clear and  
 more beneficial in matter of aggravation. For example I bring  
 trespass against M. for forcible entry into his house and add  
 further that he beat and abused his wife servants, and  
 children, now for these he cannot recover substantial damages,  
 as each of these persons injured has a separate remedy,  
 these are therefore introduced merely in aggravation.

2d R. 17.

2d R. 66.

2d R. 100. even to in of phas in M.

"Non temper natus  
 minus antedicti"

sed non "predictum"

Co. L. 29.

With regard to certainty, one important rule to be be-  
 noted for the cases to which it is applied, occur in almost  
 every train of phas in M. "The words said, alors, then  
mentioned do not import sufficient certainty when the  
 words are two antecedents, to which they are referable." For exam-  
 ple in an action in L. of the counts of L. b. b. b. a. counts M. of  
 the counts of L. b. b. b. the first two are, that in the counts  
alors, the first dis is this is not sufficient certainty:  
 He should have said in the counts perhaps or last of  
perhaps

Lew. 59.

Com. di. Phas

C. 32.

1787, 1788

It is further to be observed that the declaration may be  
 in part for conversion and also for the residue for  
 example. L. b. b. due for two substantial matters, one of which is re-



## Pleas and Pleading:

arrived with a sufficient amount, and to the rest the rest <sup>shall 28.</sup>  
may recover for the poor part, and fail on the other. <sup>1. Buss 28.</sup>  
the jury being sworn for a horse which is described with all <sup>2. Buss 370.</sup>  
necessary certainties, and as for "a quantity of money" for the  
last part his declaration is insufficient, but he may recover  
for the first.

It has been observed that the rule is certainly confined  
to the Barber Case, and is a judicial matter. It is difficult  
to see how it can be so, and to see how it is required. <sup>6. Buss 72.</sup>  
but as greater practice certainties is necessary than the nature <sup>5. B. 34.</sup>  
of the facts will conveniently admit, and the documents are <sup>2. Buss 74.</sup>  
said to be sufficiently certain, if the jury can know from <sup>6. B. 87.</sup>  
them what is meant. This rule is chiefly convenient with <sup>8. B. 121.</sup>  
the subject matter and with the description of it. It would  
seem impossible to reconcile all the decisions on this point.  
In some cases there have been very strict and in others ex-  
tremely loose. Thus in Good for a certain ship and sails <sup>5. Buss 72.</sup>  
the declaration was held to be sufficiently certain. Yet in <sup>2. Buss 28.</sup>  
McGowan's case, it was very indefinite. That however is <sup>8. B. 121.</sup>  
an instance of more looseness than had been allowed in any  
other case. In Frederick for tobacco some left, and in Pro-  
ver for seven pieces of men. The declaration was held to  
be too uncertain. To be, in respect of the tobacco  
pieces of men. Yet in Good for tobacco a quantity of goods <sup>1. Buss 114.</sup>  
it was held to be sufficiently certain. No doubt can be  
made whether in the latter case the declaration would now  
be deemed sufficient, for there it is not to be expected that

### Means and Pleading

each volume will be particularly marked, yet the number and spots of the volumes, might certainly have been given. Thus far, as to the doctrine of certainty, as to which I again observe that it is impossible to give a precise rule, for the infinitely varying degrees of certainty cannot be exactly supplied. Some discretionary power with the judge is unavoidable.

4. Inst. 8.  
Lect. 212  
250

An advantage cannot regularly be taken of mistakes in a declaration, by a plea in abatement. It must as a general rule be by a demurrer, or motion in arrest. The reason is that a plea in abatement goes to the writ, and a demurrer only to the pleading.

Lect. 212  
Miles 470  
Laws 172

There is one exception however, to this rule, where there is a misnomer, or variation between the original writ and declaration; either of these may be reached by a plea in abatement. The reason is obvious. Misnomer is not sought of the allocation or argument of the plea. It does not contain an affirmation, and therefore insufficient or sufficient, in point of law is not triable at it. A demurrer will not reach it, for the Court do not know judicially, that there is a misnomer. So also in casual damages does not appear on a demurrer that there is any, for the writ is not interpleader or a demurrer. The rule then is loosened in misnomer.

In dealing with a contract which by the Common Law is required to be in writing, the statute that it is in writing. However its violation is all, for it does not show that such formalities attend the contract as

## Heads and Pleasings.

the common law requires. Thus if the bill would reduce  
in a contract of apprenticeship, he must allege that it was  
by assent, for the Common law requires that such contracts  
should be by assent. 6 Co. 39.  
2. Mod. 341.  
Butt. N. P. 27  
Talb. 519.

To also in declaring on a contract or conveyance un-  
known to the common law, being required by Statute, to be  
in writing; the bill must aver that it is in writing.

But on the other hand if the bill declares on a contract or  
at common law without being in writing, but requires by  
Statute to be in writing, he need not aver that it is  
in writing. This is true of agreements which by the Statute  
of frauds and Perjuries are required to be in writing, as for  
example one agreement to pay the debt of another. It is  
sufficient if it appears by evidence to be in writing.

Now if it is enquired what is the reason of this differ-  
ence? I answer, 1. As to Contracts, required by the Common  
law to be in writing, they must be so alleged, because the rules  
of pleading are rules of the Common law, and the rule re-  
quiring particular contracts to be in writing, being a part  
of the same law which regulates the pleadings, they were  
settled according to that.

2. As to contracts unknown to the Common law, being required  
by the Statute to be in writing, the reason is, that the same  
law which creates the contract or conveyance, requires it to  
be in writing; as in the case of a conveyance of lands, which be-  
ing unknown to the common law, it has a settled rule  
of pleading relation to it. So the Statute requires



## Plead and Pleading.

particular formalities, they must therefore be observed.

3. As to those contracts which were once a common law, without being in writing or which are required by Statute to be in writing, as the Stat. of Frauds and Stat. of Wills, for example, the reason of the rule that they need not be averred to be in writing is, that these having been once a common law, were allowed by the rules of pleading, to be averred on without it; and the Statute for which it requires that an agreement to pay the debt of another shall be in writing, has not varied the rule of pleading, but only made necessary the introduction of new evidence.

A declaration may be general, or special.

The only difference between them is, that a general declaration makes a general statement, than a special one.

4. Bac. 8.

For example, in a declaration about a bond, for money paid and recovered to the plaintiff, if the plaintiff merely states the inclosed sum, and then avers the promise, the declaration is a general one; but if he avers the facts out of which the inclosed sum arose, then it is a special one. So also in an action of trover, he commences his declaration by a general declaration, alleging only a demise to the plaintiff and an ouster by the defendant, to whom as he always owns, he says the move in which he acquiesces his title to the estate, as that is due to his lord, he claims from the defendant. His declaration is now a general one. In an action on a bond, too, the plaintiff usually avers only the penal part merely, but he must state the condition and

# What is a Declaration.

must allege a breach: but this is not necessary.

The off in declaring on a deed is not sufficient. There is no power to entitle himself to recover. This is well settled in the last example. In declaring on a bond bound to affirm never notice the consideration. but may have that for the express to be assured of, in a plea of performance, or to men on a covenant, affordable by any assumption, but not be alleged in the bill. Long 642

In an action of a sum for the word agreement, is implied. and tantamount to promise. In action was lately taken 2. Nov. R. 82. in the English Court of Common Pleas to a declaration for a sum 3. Nov. R. 160. fact 363. and alleged that word, and the Court held the rule as it has been stated.

It is a general rule that where from the facts stated the Law 49. law will raise a promise, the promise must still be substantially 2. Nov. R. 157. twice alleged. For this plain reason, that the fact creating 3. Nov. R. 160. the indebitment furnishes only evidence of a promise but it is not a promise in itself. If I saw that the debt received money to my use, and has not paid it my declaration is insufficient. I should also have stated a promise. 3. Nov. R. 164.

There is said to be an exception to this rule in an action on a bill for change against the drawee. and not promise 3. Nov. R. 157. by not against the maker, because it is said in 2. Nov. R. 157. the drawing of the bill is considered in law, as an act of promise. I don't know that this point has been ever decided in law but I don't think it can be taken to be law. If one will be permitted however to reason in the subject, the







## Joinder and Disjoinder

But as the success, for the most I think, would depend on the  
fact, 497. to the disjoinder facts.

1 Bract. 68.

Doct. 321.

4 Br. 9. 10.

If I believe great to B, to be by him, according to C. ...  
It is to be seen his trust, since A or C may have an ac-  
tion, but they cannot join in one suit. The rule that with-  
in may have an action is not immaterial and has been shown  
under the title of bailments. As a general rule, the consid-  
erance can maintain the action because the contract was  
made for him; the consideration because the goods were his.  
But they cannot join for their grounds of action are differ-  
ent.

### Joinder and Disjoinder

Having thus far considered the joinder of plaintiffs, it  
is now proposed to consider the joinder of defendants.

It is a general rule that where the cause of action, arises  
out of the joint act of two or more, they must be joined as defendants.  
In actions on Torts, they may be joined or not, at the option  
of the plaintiff. In actions on Contract, they always must  
be.

But X.R. 5.

Co. 1. 674.

But 15.

But 314.

But where the cause of action does not arise out of the  
joint act of two or more, one only can be sued.  
Thus, if two persons at the same moment, each commit  
some wrong of the tort, they cannot be joined in the action,  
as tort, though each is liable in a several action. As if  
A and B should at the same time call C a thief.

But X.R. 5.

But 6.

But 262.

But if two or more join in committing a trespass, they may  
be sued together, for then the act of each is the act of both.  
So in an action for a malicious prosecution they may be joined.

Joint and Several.

There is an act, in which, a partnership of three persons  
concur. In fact, committed by three or more, the act  
may be each separately, or be in any two of them all, or  
any part of them.

Now it may be asked what is the difference between these  
cases and that of Standers. Standers strictly speaking <sup>2 Pars. 275</sup>  
Standers is not a joint, but a more wrong. These cases  
are frequently confounded. A joint is, in a fact, as dis-  
tinguished from wrong. An act may be committed by  
two, as for example, in the infringing of a libel, or it may be  
one and the same joined in the action.

If two cannot be joined in an action for a strict tort, com-  
mitted by each separately, for here by supposition there was  
no concert of action. Suppose I and B without concert <sup>Sides. 133.</sup>  
enter our respective lands and cut down a tree, I cannot join  
them in an action; and if the cut tree was in use with pre-  
vious concert, the act of one is the act of the other. <sup>4 Pars. 11.</sup>

Two or more bind themselves as a joint party, that they  
must all be joined as defendants in an action on the breach  
joint. In a joint contract, the party is not compelled  
to join the trespassers as separately. But in a contract or contract  
jointly made, the rule is otherwise.

But if two or more bind themselves jointly and severally, <sup>2 Pars. 393</sup>  
there is no need of joining them together. The party may be <sup>2 Pars. 397</sup>  
joined as separately is liable to be sued in a several action.

If two persons bind themselves jointly and severally all  
may be joined, or each may be sued separately, but two of





inclusion of the statute must be common in its scope.  
The reason of the distinction is that in this case, the bill  
may not know who are the respected otherwise than by their  
respect as such; or he may suppose that they have been  
unanimously and severed.

Joinder of Actions.

Thus far as to the joinder of parties. But next I en-  
quire is, what things or causes of action may be joined  
in one declaration.

The joining of different causes of action is called a  
Joinder of Actions.

It is a general rule that several causes of action of the same nature  
and between the same parties, may be joined in one declaration, to be tried however in different  
counts. The word count and declaration, are in most  
our use, not always synonymous. By Count, as contradis-  
tinguished from declaration, is meant a statement of  
one cause of action, where there are several. By declaration  
is meant the aggregate of all the counts together. When  
a single cause of action is declared on, the word declara-  
tion and Count are synonymous.

But the general rule requires explanation. It may  
be asked what is meant by several causes of action  
of the same nature? or how it can be ascertained when  
they are so? The rule is this, that if several causes of ac-  
tion all require the same proof or common law,  
they are of the same nature, and then according to the  
general rule (for it is not universal) they may be joined in one  
declaration.

### Joinder of Causes

But it may still be asked, what is meant by joinder of judgments in this case? In civil cases there were at one view two kinds of judgments; one was called a capias and the other a miserere coram. Now if two causes of action both require a capias, or both a miserere coram, they are according to the general rule, to be joined in one declaration. But further as to these superficial judgments.

In civil cases coming in in force and arms, besides the damages given to the party, the common law judgment, as it is expressed in "an, after profane warning, &c." that he be taken into custody, until he pay a fine for the breach of the public peace, for any wrong committed by force, even considered as, in a proper criminal, as well as in relation to the party. On the other hand, in all civil actions not coming in force and arms, the judgment was in miserere coram; that the debt be in money, or that he be amerced for withholding from the plaintiff his right.

1 Mac. 191.  
Gr. 20. 316.  
1 Mac. 30.  
2 Nels. 319.  
1 Ventr. 355.

The general rule then, is that if several causes of action require the same judgment, between the same parties, they may be joined in one declaration. For example, if I sue B on a bond, and also on a bond by parol, both causes of action may be joined. For the mode of procedure at the trial is the same in both, and the common law judgment would in both cases be in miserere coram. The general rule is indeed different for in the one case it is non est factum, and in the other nil debet. But both require the same judgment.

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It is not however unreasonable to say that several causes of action require the same judgment between the same parties. They may be joined in one declaration. 1 Will. 25.

But on the other hand, it is universally true that if they all require the same judgment and the same plea, that is, the same general issue, they may be joined. Thus if A holds two bonds against B, or two covenants to, or two promissory notes, he may sue on them both, (in different counts) in the same declaration. For the disposition and general issue is the same in both. So if A has two deeds 1 Will. 252. deposited against B, as if B had received him of two distinct pieces of land, both causes of action may be joined, for they are of the same nature and require the same plea 'not guilty'. There is no doubt but that there may be a joinder of actions on a promissory note and bill of exchange, for the judgment is the same and the general issue of non assumpsit is pleaded to both. So for the same reason an action on an express assumpsit for a promissory note promised, and an action on an implied assumpsit may be joined. So a land and battery may be joined with false imprisonment, for both are injuries with force, and require the plea 'not guilty'. So likewise may land, and malicious prosecution, for both are actions on the case, for which the judgment is in conscience, and both have the same general issue of not guilty. It has been doubted, indeed, whether assumpsit may be joined with a quasi and battery, the joinder is laid down with a plea, in many of the books. But





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action, in two different persons. For in being one, or his  
action for the debt of his testator, the Executor acts in a  
representative capacity. Trespass & Contract can never be joined. Lalk. 10.  
1. Bro. 30.

But notwithstanding the general rule that where the  
payments are the same at common law, and the parties  
the same, the actions may be joined, yet both of any  
kind can never be joined with contract, even though they  
should coincide in fact so that the judgments would be Lalk. 10.  
1. Bro. 30.  
the same. Slanders for example, which requires only a  
judgment in medietatem, cannot be joined in the same  
declaration with a quasi delict. For the one is an action  
in bona ex delicto, and the other, ex contractu; and the  
causes of action in the two are different. But the law is  
the same whether the general issues are make or not.

Nor can Trespass & vi et armis and Trespass & on the case 1. Inst. 366.  
2. Inst. 293.  
4. Bro. 31.  
be joined, even though the latter be ex delicto. For the  
causes are different; and the case, if ovine comes within  
the operation of the general rule. For example Trespass & on the case 2. Inst. 319.  
2. Bro. 114.  
1. Bro. 33.  
cannot be joined with malicious prosecution, nor with  
Evil. Nor can assault and battery, be joined with  
Slander.

Assault can only be joined with vi et armis in the same  
declaration both are founded on contract & ovine require 1. Inst. 2.  
1. Bro. 31.  
the same common law judgment of medietatem, and  
the proceedings in the two actions are different. But  
Assault & vi et armis can be joined, and Slander & on the case.  
Because the action of assault is in quasi delicto & ovine.

Joinder and Disjoinder

examination must be before an arbitrator. It cannot be combined with any other form of action whatever.

Now it appears from what has been said that there are certain supposable cases which cannot be covered by any universal rule. But a summary of the law on this subject drawn from the foregoing observations may be presented, as follows:

Where the judgment and general issue are the same, in all, different causes of action may, always, be joined.

But in some cases there may be a joinder, where the general issues are different, if the judgments are the same. But this rule is not universal. Its application can only be learned from the examples, which are given. These are sufficiently copious to show its operation.

On the other hand, where the judgments are different and common law, and a fortiori, where the plea is also different, a joinder of actions is never allowed. This rule is universal. If then, no other objection is made, than that the judgments are different, this is decisive. But it is still more clearly so, when not only the judgments, but the general issues are also different.

There remain now to be given, some rules under this general head, relative to the effect of joining several causes of action which in law cannot be joined. It is called a misjoinder of actions.

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misjoinder of actions.

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When several causes of action are joined in one declaration, when consistent with the rules which have been given <sup>Book 115.</sup> <sup>1778, 108.</sup> could not have been joined, the fault may be taken clearance of, on demurrer or after verdict by assent of judgment. In other words a misjoinder of actions is an incurable fault.

Now if it is asked why a misjoinder of actions is an incurable fault? I answer: One reason is, that it is impossible for the Court to know what judgment to render. For (as in 1000) there can be but one final judgment to one declaration; and here, if the jury find for the plaintiff on both counts, one would require a 'judgment of assessor'; and the other a judgment of trier of record. But here it is material to distinguish a misjoinder of actions, from what is called duplication in pleasings. There is a specific difference in their nature and effect; and yet the two have often been more than by confounded with each other. A misjoinder consists in joining different causes of action which by law cannot be joined, to enforce distinct, substantive rights of recovery; as for example, joining a count for Trespass, with one for debt in the same declaration. Duplication consists in joining different causes of action to enforce only one, 'entire right' of recovery. It is the essential difference between them; and in the mistake of lawyers in confounding them have occasioned much confusion in the arguments at the bar, and not infrequently small uncertainties in the decisions on the point. It is better more matter of form and set.



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advantage can only be taken of it, by some advantage. It is waived by pleading Ver.

I would here observe that in Connecticut the common law difference between judgments in civil actions does not exist. A compromise, and a misererecordia, are judgments unknown to our law. They have here been regarded as unnecessary. Still however the rules relating to misjoinder, Specialization on the difference between these Common Law judgments, are the same, I trust, in Conn<sup>t</sup> as in England. We have adopted the rules of pleading from the Common Law, and if we suffer ourselves to break down those distinctions, which the common law has established, we shall effectually prevent the attainment of that certainty which it is as the design of pleading to ensure. This is the universal opinion of the prosecution. And a misjoinder of causes of action, is here as well as in Eng<sup>d</sup> an incurable defect.

Conn<sup>t</sup> 113.

1 Mass. 12.

10. 43.

202.

2d. 842.

3d. 497.

3 R. 6 20.

3 R. 292.

6 D. 71 558.

Perhaps for breaking into the neighbor's house, and a beating his wife, ver. quod servitium amittit, is a good plea, though the first wrong sounds in free, and the last in case. For here the beating and ravages are not essential to the action, but are mere matter of aggravation. There was but one injury. Here is certainly no misjoinder, for there is no joining of two causes of action, and though we have two actions, one sounds in free, and the other in case, yet there are not distinct causes of action.

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If there then are several actions for several causes of the same nature, the Court may well be induced or constituted to reduce the debt from separate bills of Court as if it holds 10 notes of hand against B. and brings 10 actions. The Court have a discretionary power to order a joinder, and when the CP do thus direct, the bill is compelled to pay the costs of the addition on the ground of unnecessary vexation.

When the declaration is demurred to for misjoinder the bill cannot enter a notte hocque, for one cause of action must proceed in the other, for he shall not destroy the effect of his misjoinder, and defeat the demurrer, by his own act. It is however or to be ruled of, to settle in England, that he be demurred to in.

Some rules of a miscellaneous nature still remain under the head of declaration.

The declaration must always agree with the writ. If it was declared to be an exposition or amplification of the writ, and the writ is the foundation of all the proceedings, and gives the Court their authority to render judgment. If the writ then sounds in Exemplum and the declaration in case, the variance is fatal and the declaration abates the writ, and destroys the suit.

When the plea of right of action is to accrue on the performance of a condition precedent on his part, he must aver performance in his declaration and an omission of this averment is an incurable defect. For otherwise there is no cause of action appears in the declaration. It is to be ruled of that he must aver that the writ is to be paid the full sum of money at such time, provided the bill is well in the same time, so

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is certain act, and then avers that the defendant has not done  
the avowed; if declaration is false, he should have averred  
performance on his part.

But when the plea is in general terms, like non est,  
admission, he is not bound to take any notice of that condi-  
tion, it is mere matter of course, for the plea. There is a materi-  
al distinction between conditions precedent and conditions sub-  
sequent. The former is necessary to create a right of action; the  
object of the latter is to rebut a right already existing. In the  
first case you must take notice of it. Thus in an action on a fe-  
real bond, the plea usually states only on the general part the  
defendant then demurs and avers, notwithstanding the  
performance.

When there are reciprocal covenants or promises between two  
parties, the plea is not bound to aver performance on his part. But  
reciprocal covenants are means & covenants independent of each other.  
Thus as is not infrequently the case in indentures, if the defendant  
is in consideration of the plaintiff's covenant, the plea is an admission  
on the promise is not bound to aver performance of his coven-  
ant, but the debt promise was not made in consideration of  
the plaintiff's performance, but only of his covenant. So where  
I promise to deliver goods to B. in consideration of the  
promise to deliver to him, B may maintain an action with-  
out averring performance.

On the other hand when the covenants or promises are reciprocal  
and the promise is made in consideration of the promise, or the  
covenant is made in consideration of the promise, or the

2d. 2.  
2d. 2.  
2d. 2.  
2d. 2.  
2d. 2.

2d. 2.  
2d. 2.  
2d. 2.  
2d. 2.  
2d. 2.



2 Lev. 236.  
Ex. 9. 361  
Talk 636.  
Mag. R. 96.

2 note - 278.  
2. May. R 859.  
7. John. 109.



# Read in a Reading

2 Phil. 335.  
1 Phil. 339.  
2 Phil. 341.  
1 Phil. 332.  
193.  
Law. 49.

states a promise of the author to be a summary  
of six '184' the declaration is void, though it is made to  
more largely to be to be directly that that the defendant  
was to pay 1000 without the '184'.

That this general rule that facts which constitute the  
gist of the action must be positively alleged, does not hold  
I conclude, as to such facts <sup>are not</sup> traversable by plea,  
however necessary they may be in the case. For the reason  
of the rule requiring an express allegation, is that a de-  
fect may be taken. But when the facts are not tra-  
versable, I presume they may now be in under a verdict.  
Thus in a promissory the consideration is unquestionably  
of the act of the action but it usually occurs in various  
"whereas" in promises must be positively alleged but the  
consideration is not traversable for it would amount to  
the general issue. So in trespass the possession of the plaintiff  
of the act of the action but it usually occurs under a verdict.  
When in certain cases, whereas is necessary to be used the  
verb as in an action against the owner of a dog for injury  
done by him, the whereas is of the act of the action, yet it  
is never directly averred, but by a nomination absolute.  
the dog being known because it is not traversable.

Now does the general rule requiring averments to be direct  
and positive, hold as to matters of inducement, for these are  
not traversable, nor is direct aver they of the substance of the  
action.  
If the declaration is void in part and void in part, the rule

proph. 117.  
q. 70.

will as have shown is that the defendant resides on the  
part which is sold. Thus, suppose he is the sole part owner  
in itself contain a complete course of action on the bill and  
not recover. Suppose for example the association is a  
two separate bonds, and one bond is insufficient  
to make a demand to the plaintiff now will have been  
made on the cross bond. For that alone contains a complete  
course of action and would have supported a separate  
indictment. And indeed it is a general rule that where  
the bill contains two counts, one of which is good and  
the other bad, and the defendant to the whole bill will  
have no answer upon the cross.

But when there are two counts one of which is good and the other bad, and a verdict is given with entire unanimity for the full prosecution must be arrested, and a verdict on one count is required. In this case, where there is not a verdict in favour of the whole, finding the indictment to be in the former case it would never have been an objection as to one count on a summary, and because the counts are in the alternative, the first need not have been withdrawn, and the jury may have a verdict then on the bad count as well as on the good. Suppose then there are two counts in one indictment one of which is actionable and the other not, and the jury find a general verdict, for want of a particular decision between them, they may return the verdict for the one or the other, or the same, or they may find a verdict on one count and a verdict on the other, and a verdict on both counts may be returned. There is no criminal case for which the above rule is inapplicable, and to have no verdict on the

pleasure & pleasure

But I observed just now, that if the declaration be partly good and partly bad and the good part does not alone constitute a complete cause of action, the effect is the same, as if it was insufficient in toto.

And the reason is that all the parts except surplusage are necessary to constitute our cause of action; so that if one part is destroyed, no cause of action is left.

Suppose, for example, a declaration in assumpsit, in which the promise is well laid, and the consideration immaterial now in this case, can the bill recover? I suppose not, for a promise though well laid, without a consideration, constitutes no complete cause of action. This rule I have drawn on my own authority.

Am. Dec. 18  
2. 36. 2. 37.  
2. 38. 2. 39.  
2. 40. 2. 41.  
2. 42. 2. 43.

On the other hand, if the plea to the whole of the assumpsit is bad as to part, & the declaration is well in toto, and the bill will recover on the whole. Thus suppose in Treble, to a good and better and

the low spring water averaged than the 18th & 19th. 2 No. 23  
Remained to me present the crop more like in 27th 30th  
much, for the reason, as without a remittance from 2. 18th & 20th  
the 27th, the lowest means ex. affords give incense? for the  
same circumstances in the celebration. The 18th in  
part to a better than a remittance than the last  
circumstance, due to that only, has the crop seen with  
to improve.

[illegible]



## Plead and Pleasings

Now come to treat of the pleasings which follow the declaration. These consist of the pleasings made by the deft by way of defence, and of those made by the plt in answer to the defts defence.

Pleas are of two kinds.

### Dilatory pleas, and Pleas to the Action

#### I. Dilatory pleas.

Dilatory pleas are so called because, formerly, used without any reference to the truth of the facts, but now by for the purposes of delay. But now by Stat. 5 Geo. 4. no dilatory plea can be admitted without an affidavit made of its truth, or some probable matter should the Court to induce the belief of it.

Then dilatory pleas are subdivided into three kinds 1. Pleas to the jurisdiction of the Court. 2. Pleas to the validity of the writ. 3. Pleas in abatement of the writ in their order.

Plas jurisdiction.

#### II. Of Pleas to the Jurisdiction of the Court.

The grounds of these pleas are somewhat various. For example, some kind of the deft may in some

Case 11354.

3. 11354.

2. 11354.

11354.

cases, be pleader to the jurisdiction. Thus, it is a rule of the Common Law, that an attorney of one Court is not liable to be sued in another, and if he is, he may plead his jurisdiction to the jurisdiction.

That if the Pt applies to be removed, has a limited



What are local actions

That the cause of action arises in a particular country or  
pleasable to the <sup>jurisdiction</sup> in local actions but not in all  
and are transitory. There may be some that arise in one, but  
some actions merely civil are almost universally trans-  
itory, as Debt, & ground Tenure, &c. See 2. Brown

Actions are local when the independent is in rem,  
as in actions real; so the recovery of house & possessions.  
For the 3<sup>rd</sup> of Edw. have no power, to put the plaintiff in pos-  
session of property in transience. So in all criminal in-  
16175-181

16175-181. See 1. Brown, and a transitory action to recover penalties, See 20

20. See 1. Brown. Action is local, because the penalty is extinctly local.

See 161112 Debt to recover a penalty, for the violation of a penal Statute  
161112-74. in one country, can never be brought in another.

Where the subject of a suit is local, though the form of the  
action be personal, still the action is local. As trover, quare  
clamorem pepit. So also in debt or assumpsit the assumpsit  
of a lease, the action is local; for concord runs with the land,  
therefore the assumpsit is local, and the action is so, See 1. Brown. There is a Wayne  
161125 decision on this subject in Tridley which already is not  
law. Therefore there is no pretence of it.

But it is necessary to observe one distinction on this  
subject. The action of sedes or concord, brought by  
161125-2416. See 1. Brown, 161125-2416, is not local though it is in re.  
7. See 2. a See 1. Brown and assumpsit, because in the former  
161125-2416. See 1. Brown, the action is founded on privilege of  
concord, and in the latter on privilege of  
title.

I refer to the provision, & especially the last, which is the  
rule of pleading. It seems when it is necessary to take  
pleasure in order to the disposition of rights, to be taken  
at this point, or the exception is waived. The reason when  
it is necessary to take exception in this case is unpleasant  
in the case of a discovery in these cases that any other plea  
will operate as a wave. Thus if the proceedings are waived  
non just to waive, the subject matter of the claim is not within  
in the provision of the law. The exception must waive the  
subject the plea to the disposition. For as it has been before  
repeated, the proceedings in these cases are altogether waived  
and the waiver does take effect for any other plea  
of the claim. The injury & injustice in this subject are waived  
or under false representation.

I refer to the provision in order, in order in the law  
in order and up by his attorney for the attorney himself in  
order of the court who does not know the law is not  
plea to be law of the court and the attorney himself is  
bound to the provision, and therefore the right there is  
quarrel to be law of himself. For well again does not take  
with reference to waive which are waived non just, for the  
right in these cases cannot be waived whether the law is  
disposed by the attorney or not. It is waived non just non just  
waive waive the provision, & plea to the provision there is  
the provision is not waived by the attorney himself is not  
waived non just non just.



3 Pl. 353  
Lanc. 181.  
Salk. 298.  
Carr. 183.

## Plea and Pleading

Apply to the jurisdiction conferred to the court by the Statute that is in issue, and is a matter of law. The court will have further experience of the suit.

But rule of practice has obtained in Court which I don't know to be authorized by any English rule. It is a judgment rendered on a plea to the jurisdiction, as to the plaintiff's costs are given to the defendant, but if the judgment is given without plea or defence to the Court, no costs are given. It is difficult to conceive with what rights the Court can give judgment for costs when the cause is dismissed because they have no jurisdiction. There seems to be a total absurdity in the practice. But it is of long standing, and a Court should have been considered as law. The object of it is said to be to prevent the defendant from bringing a subsequent action against the plaintiff for the repetition of being compelled to answer to a suit coram non iudice. But if the defendant is entitled to such a claim, is clearly, I think, would be no bar, that he had judgment for costs in the former suit.

## To the disavowal of the Plea.

1. The disavowal of the several claims are to the disavowal of the plea. The grounds on which this plea is supported, are somewhat various.

1. No. 2.  
3. No. 70.  
to. 128. a.  
Lanc. 181.

1. No. the common law disavowal may be disavowed to the disavowal of the plea. For a man who is out of law, is out of the protection of the law, and can maintain no action.

Lanc. 182. 2-4  
3. No. 35.  
12. No. 410.

If this disavowal exists at the time the claim of a claim is made, the plea destroys the suit entirely. But if it is superadded,

What must be said.

31

It is not a temporary impediment which can remain  
until removed or removed, and then the defect must  
lead to the same result. Perhaps not precisely these cir-  
cumstances, at all, were the factors, except as to the fact of  
the existence of slavery, but in some of the States, outlawry  
is still in use.

The disability extends only to rights brought in the office  
over rights, and not to those in the right of another. Co. Lit. 120a  
3. Dec. 762.  
But how many therefore maintain an action in the name  
of an administrator or executor for otherwise his out-  
lawry would operate personally, not on him self but on those  
who were entitled to a beneficial interest in the estate.

Then if an outlaw since an outlaw, that man be a bad Co. Lit. 120a  
3. Dec. 762.  
not to an action by the executor or administrator, for here  
the disability goes to the person whose right is to be enforced.  
Though an outlaw cannot maintain an action in his 1. Pl. 60.  
Nov. 1  
own name, he is still liable to be suited. For his outlawry 3. Dec. 762.  
is intended to deprive him of a civil right and not to per-  
mit him with an immunity. For us answer then the  
question that he is an outlaw.

Outlawry is always a disability 1. Pl. 60.  
Nov. 1  
and in law. When the cause of action is for feudal 3. Dec. 762.  
3. Co. 109  
law, it is blatant either in rehabilitation or in law. 2. Co. 29.  
Co. Lit. 21.  
The reason is obvious, if the cause of action is feudal, the 158.6  
Lanc. 38.  
plaintiff cannot have any remedy to enforce it 184

In the other cases where the causes of action are not  
feudal in the outlawry it cannot be pleaded in law and

same as those  
the.

only in abatement. Suppose, for example, an assault and battery committed by the defendant off. This course of action cannot be forfeited by outlawry, the damages are uncertain, and the third has no concern with them. But if a man is outlawed for felony, by which his lands, tenements or are forfeited, he can maintain an action to recover them.

Rae 3.

Rae 39.

2d 63.

1 M & 883.

2. A second plea to the disability of the plaintiff is communication. But as this is a disability which cannot occur in this country, it is not worth our while to say for any time in consideration of it.

1 P. 302.

1 M. 211.

3. A third disability is in some cases alienage as to the question who are aliens see authorities cited in the margin. There have been many rules introduced on this subject by Statute in England. And it would be useless to go over them. The original common law rule was that every one who was born out of the King's allegiance, was an alien, but this has been modified by Statutes.

Comp. 7.

3 M 384.

Rae 488.

1 M 152.

1 M 152.

1 M 152.

1 M 152.

1 M 152.

1 M 152.

It was observed that alienage was in some cases a bar to the disability of the plaintiff. It is not always.

An alien origin can maintain no action real or personal unless he be naturalized or made a denizen. For in both real estate is to be recovered and he can hold no real estate. In those cases British being or having been in possession and

same as those

But an alien friend may maintain personal actions.

There is no locality to record at present; and the anniversary of that last edition of Bancroft has the same note to fix its date, viz. Westminster Hall as a station of flight.

This rule of the Common Law that assigns men maintenance  
no matter what or where, is provided for the poor of  
some of the richest states. Wherever they are allowed to  
reside they may, of course maintain their relations.

I am, Sir,  
Very respectfully,  
Yours,  
Wm. Lloyd Garrison

There is also in this subject a Statute Law of the United States, by which the children of citizens born abroad are entitled to the same rights as natural born citizens. They are not considered as aliens. This is a deviation from the Common Law which determines the rights of the person from the place of his birth. It is also by the Stat. of the U.S. the children of persons naturalized are entitled to the rights of natural born citizens if they were under age and resident in the U.S. at the time of their father's naturalization. But the naturalization of the father is not communicable to the child unless he is both a minor and a resident at the time.

[illegible]



# Placare Pleasing.

St. 1002. have no civil action. He is not entitled to protection,  
 1 B. & P. 163. in other words, he has no civil rights of his own. And  
 Dougl. 624. n. if beaten, though the offender may be punished, he can  
 6 T. R. 23. 49. maintain no action to recover the injury.

This is a general rule. But an alien enemy may maintain an action on a ransom bill, by the particulars. Indeed all contracts made with enemies to mitigate the severity of war, may be enforced.

A ransom bill is an instrument executed by the captor-  
 ed, by which they become bound to the captives to pay a  
 sum of money on condition, 't' release them. It is a contract  
 9 Dougl. 619. 625. that the captives shall be free. Hostages are usually given  
 11 T. R. 1784. and the enemies may recover, even though the captive is  
taken, with the hostages.

St. 102. So also an alien enemy resident here under a license of pro-  
 1 B. & P. 163. tection of safe conduct from the government, may maintain  
 8 T. R. 55. an action for a personal injury, for the license will place him un-  
 11 T. R. 221. der the protection of the law.

Whether an alien enemy not thus protected may main-  
 11 T. R. 84. tain an action in a contract or administrative matter is not settled  
 11 T. R. 84. in the books. An alien friend, as a contract or administrative  
 11 T. R. 84. matter, may hold lands, but in his own name, only when a moral  
 11 T. R. 84. debt. If sworn in there can be no moral debt.

In a plea that the bill is an alien enemy, the plea is good.  
 St. 1002. 1 B. & P. 163. 11 T. R. 84. the bill is not bound to prove that it is a civil action  
 it is presumed, until the contrary is shown.

436. In England, papist recusancy, promissory, attainder of blood

Treason or felony, and entering into religious, are all plead-  
able to the disability of the p[er]son. With most of these we can have  
no concern, and I am not aware that our Statute respect[ing] 3 Bl. 301.  
48.  
t[ri]al Treason, has made any provision of this kind. But our Statute 4 Bl. 350.  
on that subject is certainly different from the common law.

8. That the p[er]son being alone is a single covert is also a dis- 1 Bl. 403.  
ability which may be pleaded in abatement. But a married 3 Bl. 631.  
woman may, if her husband be joined with her, as co-p[er]son, 2 Bl. 105.  
maintain a suit, and then the coverture cannot be plead-  
ed in disability.

But the coverture of the p[er]son is pleadable in abatement only, 3 Bl. 631.  
and not in bar. If the defendant does not plead it in abatement, he 2 Bl. 24.  
waives his advantage. The reason for this applies to abatement 1 Com. 311.  
pleas in general, and whatever may be taken advantage of 2 Bl. 141.  
by a dilatory plea, shall not be alleged in any subsequent plea.

This is a general rule, for it would be unreasonable, 2 Bl. 763  
when the defendant has pleaded it in limine, to suffer the p[er]son to  
go on to traverse or, and then plead himself a dilatory plea.

The common law, if a woman marries, after the commence- 1 Bl. 631  
ment of the suit, the coverture may be pleaded in abatement 2 Bl. 577  
of the suit. But we have a Statute in Count allowing the hus-  
band after appearing and answering the marriage on the  
record to proceed in the action.

9. Insane may be pleaded in disability when the ass- 3 Bl. 301.  
ent is brought within the Guardian in next friend, 3 Bl. 301.  
The reason is that an infant can only bring an action by his 2 Bl. 240.  
guardian or next friend, and he is supposed by the law, 2 Bl. 240.  
to be incapable of suing by the law, 2 Bl. 240.

## Plea and Pleading.

to be incapable of managing the suit himself or of employing an attorney. But for the distinctions on this subject and the cases in which the infant may maintain the action, see "Parent and Ward."

3 Bl. 301.  
Lew. 114.

10<sup>th</sup> That the plea is not in esse, is pleasurable in disability. in other words, it is a good dilatory plea; as if an action is brought after the death of the nominal plaintiff.

These are all the grounds on which pleas to the disability of the plaintiff are allowed.

3 Bl. 303.  
Lew. 109.

Plea to the disability, concurre to the person by praesumptio, judgement whether the said A. B. ought to be answered.

Lew. 103.  
109.

The conclusion differs from that of a plea to the disability. Lewes makes a distinction which is not to be found in the other books, that if the disability is temporary, the plea should conclude with praesumptio, that the plaintiff remain without plea, that is until person recovered or. That is this agrees with the English practice, I do not know.

### Abatement.

3 Bl. 301.  
303.

3 Dilatory pleas of the third kind are called pleas in abatement. The term abatement denotes the frustration or annihilation of the writ. A plea in abatement is of course intended for that purpose.

17 Jac. 15.  
56th 299.  
3 Bl. 301-3.  
320 351.  
354.

Plea in abatement, generally entered to the writ only as a plea in the court or declaration, be so soon as the plaintiff appears.

It has been observed that in abatement, the writ and declaration are together. But what in our practice is abatement, the writ and declaration are to be removed.







## Blas and Pleading

(Sott. 71.)

partic is not covered in the mind, there is a sense in the  
the advantage of, by a different mode of pleading.

So, and in abatement, the extent of the injury is not  
is and the law is clear and takes the reason that  
those blas are not favored, but are in a certain sense  
advised to the law, for their object is not to answer to the  
merits of the cause, but to take advantage of some mistake  
in the manner in which justice is sought.

S. R. 185-6.

S. R. 187.

S. R. 188-189.

S. R. 189-190.

S. R. 190-191.

S. R. 191-192.

S. R. 192-193.

S. R. 193-194.

It is well that "blas in abatement" must be confined to a  
certain intent in every particular. This is the language  
in which the law describes the proper scope of contents.  
and the law has some distinctions as to the effect and ex-  
tents of contents, which are rather curious, than unusual.  
In blas of abatement, the same scope of contents is required  
as in blas of matter of discovery.

The examples in which blas in abatement are not to be  
are given. The law makes the intention or purpose of the  
blas a matter of consequence, and the law of the case.

### Misnomer

S. R. 194-195.

S. R. 195-196.

S. R. 196-197.

S. R. 197-198.

S. R. 198-199.

S. R. 199-200.

Misnomer is a matter of consequence in a legal sense, and  
must be shown in the evidence in the light of the court.  
and it is the case of that description which the law requires  
to be superadded to the name to determine the proper  
name. The law of the case is the intention or purpose of the  
blas in the mind of the party. The law makes the  
intention of the party the true name, and the name of the  
the name in which the party is named the name.

Thomas M. M. M.

of the original of the deed in question. 3 B. 502.  
The deed in question, namely, a deed of the title deed 3 B. 517.  
state, upon an abode. These were recovered in 1795  
at the attainment of the title as to the deed.

It is however, in view that the acquisition of the apper-  
ce my story, of the deed with his present late place of  
residence, is sufficient. & therefore the deed is of the nature  
of an apportion, and also I can trace it is sufficient to  
describe him as an owner. And the deed have been  
in place of abode the description is sufficient to describe  
of his late place of abode such as a deed.

The deed, B. 5, relates only to personal apportion 3 B. 512  
and instrument, and not to real actions. That reason 3 B. 512  
probably is that the person is sufficient to the existing instrument  
in the possession of the land subject for which the deed  
is enough as the instrument is enough for personal  
from the possession.

It seems now that instrument instrument instrument instrument 3 B. 512  
was pleasable to instrument for possession because the instrument  
was pleasable instrument instrument instrument instrument  
The instrument B. 5 however instrument to their instrument  
to any other. & pleasable instrument however in such case 3 B. 512  
in pleasable instrument to the instrument he is pleasable instrument instrument  
but pleasable instrument until a new instrument can be found 3 B. 512  
So that it cannot pleasable have any other effect than to  
pleasable the instrument

and so the instrument instrument instrument instrument instrument

1. Mrs. Anna H. H. H. H.

3. 3. 3. 12  
2. 4. 1. 14.

There is a mistake in the association, as of Epinephelus instead  
 of Amphiprion. There are the rules of the Game  
 Club here.

The above sheet is an additional page  
inserted into the 1st. of the above sheet.

7. Mar. 19.  
 2. Mar. 24.  
 B. 301-2.

When however you is cited in his official capacity, so that  
 that is the instrument to the action, it must be added, not  
 for the sake of certainties in the description, but to explain  
 the cause of action. If for example one action is brought  
 against the Sheriff, for misbehavior in his official capacity,  
 he must be described as Sheriff, for otherwise it never can  
 appear that there is any cause of action. This must be done  
 in one plea, & for both the various above given. But if one  
 addition by way of misnomer is unnecessary, it is no  
 misnomer, and a mistake does not vitiate it. Thus suppose  
 in an action of assault and battery the defendant receives a  
 beating from A to whom he is not known, the addition  
 was added, was not known, for a wrong reason, <sup>omitted</sup> for the  
 battery in the capacity of slave.

Therefore I want to ascertain as to whether the  
 station for the other two passengers can be found with the  
 advantage of getting to Santa Fe and then on to the  
 2nd of Nov. I presume he would be able to get to Santa Fe

The rights secured and it is of no importance to ~~be~~ whether  
to ~~be~~ secured or not. But still is the same in domestic  
as well as in foreign. Brothers for the same cause, a move-  
ment from which is of no advantage to the other.

81  
Held and the same.  
It seems not to be fully settled whether it abates bona fide <sup>bank 16</sup>  
as to one for misnomer, & abates in toto as to all, or in other <sup>P. 2. 159.6</sup>  
words, whether the right may still proceed against the <sup>3. H. 625.</sup>  
one and the latter opinion appears to be that it may.  
I cannot find any thing was decisive on this point, but  
the true principle has I think been overlooked. I should  
apprehend the rule to be this. If the cause of action is joint  
only, it must inevitably abate in toto, but if the cause of ac-  
tion is joint and several as it may, I should conclude, abate  
as to one and so on as to the other. - I desired judicial de-  
cision is not to be found.

It commonly has no addition was necessary in <sup>2. H. 469.</sup>  
the Receivers of as high a dignity as High St. and it was <sup>bank. 189.</sup>  
then required on the ground that the title became a <sup>3. H. 617</sup>  
part of his name. But the rule was in Receivers in the <sup>bank. 541.</sup>  
Statute.

I doubt whether misnomer or want of addition, must <sup>bank. 336.</sup>  
as the rule is proper is give the High St. <sup>3. H. 515.</sup>  
he must set forth his right name as to enable the <sup>bank. 554.</sup>  
to frame a better writ in future. Success this rule holds <sup>bank. 39.</sup>  
as to High St. in abatement generally. <sup>103-4.</sup>  
<sup>2. H. 117.</sup>

misnomer. He did not state not only, what his right  
name was, but that he was known and called by that <sup>bank. 544.</sup>  
name at the time of the issuing of the writ, and traverse <sup>3. H. 624.</sup>  
that he was known or called by his name in which he <sup>bank. 629.</sup>  
sued. Traverse <sup>2. H. 118.</sup>  
required in traverse <sup>249.</sup>





Phil and Manning

is reasonable but that the other is positively wrong.  
It is wrong for this reason: an alias is only used when an  
individual is known by his name, & it is not known  
that it be the only proper occasion for using it. But in  
the present case, the instrument is only executed in a  
group name of an individual & never in one name.  
I have sometimes adopted this rule in practice, and  
no exception has ever been taken to it. Indeed a suc-  
cess to the first rule as laid down in Reason, both as to

3 Feb 1844

There is however in the rules relating to signatures  
a distinction made between mistakes in Christian and secular  
in the surname: It is said by Lord Coke that mistakes  
in the Christian name are absolutely fatal and to give  
some reasons for this rule, which are founded in the max-  
im of "Latin" Lord Coke says, it is never uncertain as  
to what to give more than one Christian name. The rule  
is sometimes a very harsh one and though I do not, and  
where Lord is directly contradicted, it has been overruled 3 Jan 1844.  
even judicially by Lord Lechmere. The act of Lord's case  
in the case of John otherwise James; Lord Lechmere said  
he would take otherwise for a part of the name and then  
to avoid, being more strictly legal, it would be void

Wills 554.

3 Jan 1844.

The court always requires the full name where there are  
more than one in their proper names. I see nothing to be said  
in the name of a firm or of partnership as J. & Co. Company  
is not sufficient. The name of the firm is not the  
name of the person & the person's company is

9 Feb 1844



Marriage and Marriage Coverture of the defendant.

2. Another cause of abatement is the coverture of the wife. It has before been observed that the return of the plaintiff was a plea to her coverture. The 8. 24, 32 1801 1802 1803 1804 1805 1806 1807 1808 1809 1810 1811 1812 1813 1814 1815 1816 1817 1818 1819 1820 1821 1822 1823 1824 1825 1826 1827 1828 1829 1830 1831 1832 1833 1834 1835 1836 1837 1838 1839 1840 1841 1842 1843 1844 1845 1846 1847 1848 1849 1850 1851 1852 1853 1854 1855 1856 1857 1858 1859 1860 1861 1862 1863 1864 1865 1866 1867 1868 1869 1870 1871 1872 1873 1874 1875 1876 1877 1878 1879 1880 1881 1882 1883 1884 1885 1886 1887 1888 1889 1890 1891 1892 1893 1894 1895 1896 1897 1898 1899 1900 1901 1902 1903 1904 1905 1906 1907 1908 1909 1910 1911 1912 1913 1914 1915 1916 1917 1918 1919 1920 1921 1922 1923 1924 1925 1926 1927 1928 1929 1930 1931 1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942 1943 1944 1945 1946 1947 1948 1949 1950 1951 1952 1953 1954 1955 1956 1957 1958 1959 1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971 1972 1973 1974 1975 1976 1977 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994 1995 1996 1997 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Placidius Pleasinger not married

3 If two p<sup>l</sup>ffs. suing as husband and wife or if two s<sup>l</sup>ffs.  
Laws 105. sue as husband and wife, we not married this must be  
pleasure in abatement

Keep that the s<sup>l</sup>ffs. are in fund and sue without in-  
So. 2 89. 135.  
7-60. 53 v. marriage. is not pleasurable in abatement though; But the p<sup>l</sup>ff  
3. 78. 227. is an infant and sue without his guardian is a good p<sup>l</sup>ce  
3. 78. 29-3 to his disability. Where the s<sup>l</sup>ff is an infant the Court will allow  
p<sup>l</sup>ff time to summon in the guard, or if he had none, will appoint  
a special guardian ad litem.

If an infant heir, is sued as heir, upon the obli<sup>g</sup>  
4. 104. 405.  
Laws 105. of his ancestor, his infancy is not pleasurable in abatement nor  
inures at all to defeat the suit, but in the language of the  
Law the parol shall demur, that is the proceeding shall be shd.  
until he is of full age. The reason of this rule is, that an infant  
heir, is liable as much as an adult. The contract being made by  
his ancestor his liability is derivative, but as during his mi-  
nority, he has not the control of his estate, the parol shall demur.

But in Som<sup>er</sup> there may be a conservator or interlocutor  
4. 104. 174. as he is called appointed to take care of the suit, if he also  
cannot take care of them themselves, as secret, lunatic, &c.  
In such case, if the conservator had no notice of the suit, it  
is no cause of abatement; but the C<sup>ourt</sup> will allow time to sum-  
mon him in.

Death of parties: 4. Another cause of abatement is the death of the parties;  
So. 2 92.  
So. 2 139. pending the suit At Som. law, if a sole p<sup>l</sup>ff or a sole s<sup>l</sup>ff  
So. 2 139. died pendente lite, the suit abated, for then there was but  
1. 104. 7. one party. The Som. law rule was the same in case of the  
several s<sup>l</sup>ffs died pending the suit, except in case of personal actions.

Wheat and Wheatson, after summons and severance, that is after the court decided had been summoned to appear, and prosecute if he would, and on his refusal had been served, for then he was no longer a party. It therefore I brought an action for S and W, who were jointly interested, and to which after summons and severance, it was added Ben Ben Abate.

But in real actions there was no severance at all. 2d.  
And in case of the death of one of the parties the suit abated. 10 Co. 134.  
3d without any exception, for the extent of the survivor's 6 Co. 26.  
right was increased, beyond the part which he claim- 1 Hen. 7. 5.  
ed in his writ.

The general rule that the suit abates on the death of the p<sup>ty</sup>, holds, even if his death is after verdict and before judgment.

But if one of several depts seized the rule wrong, even at  
bowman's bay, that the depts should not abate. In such  
case the plff must make an entry of the death of one of the depts.  
If, on the record, one proceeds against the others. If now,  
even, the plff should, in such case, take action against all the  
original depts, & action is would be overseers on the

Now in "Letter 7. Chitt and S.P. Mott." in B.O. send me a  
notice in regard to the inconvenience of a claimant. In the  
death of the party is in a great measure removed. But  
under their Rules, I observe that above several  
pegs were joined in one claim and one or more died,  
it does not state if it is almost invariably the case,  
the cause of action survives at law, to the survivor or <sup>not contrary</sup>  
pegs as in the cases of joint promissories, and promises.

# Please and Blessing.

4. Nov. 54.  
 1. Term. 1844.  
 54-55  
 2. Nov. 115  
 3rd. Term. 1844.  
 and 1845.

2. For the other hand there are two or more acts and one of them does - if the cause of action survives against the others, - unless there be Statute the writ does not abate.

This maxim is the same as the common law rule, of which in this respect the Statute are in affirmance. The plaintiff must support the death on the record and then proceed against the others.

3. If a sole plaintiff dies leaving the suit, it does not abate under these Statutes abate, if the cause of action is such that it survives to the personal representatives, Executors and administrators of the plaintiff, as against the personal representatives of the defendant. This rule is true without any qualification, but in Eng. it only holds, if the death is after some interlocutory judgment. Upon which, if a sole plaintiff dies, it abates of course. The course of proceeding is somewhat different in the case of a sole plaintiff and a defendant. If a sole plaintiff dies, his personal representative has only to support the death upon the record, to enable him to enter and prosecute. But if a sole defendant dies the plaintiff must sue out a writ against the personal representative, to show cause why judgment should not be rendered against him. And if after the death of the defendant, the sole plaintiff himself should die - his personal representative may sue out his death on the record and sue out a writ against the personal representative of the defendant.

Thence to the ship

The Atlantic however in its lower reaches tends to recede in the Gulf and Southwards, but it has been a matter of fact since the construction of a lower level in the lower reaches.

Further there is no supposable radii which is not known as we see the Pacific's Atlantic in its own nature & I conclude the construction of the Atlantic in its own nature & I conclude more fully & with all the above said decides the presence of the earth. Neither of the Atlantic provides for this case in turn. To prove then that there are two other radii of which the Atlantic is the construction of the Atlantic is what is to be done. I believe it is better to prove right than left action. Successive first to the successive half and then of the other to be executed action. The execution of the other can have no concern with it. For on the contrary of the other side it is to be executed, the other parts become and left in the action which is the same as in the operation of the total transposition to the center.

Further on the Atlantic that there are two other radii of which the Atlantic is the construction of the Atlantic is what is to be done. I believe it is better to prove right than left action. Successive first to the successive half and then of the other to be executed action. The execution of the other can have no concern with it. For on the contrary of the other side it is to be executed, the other parts become and left in the action which is the same as in the operation of the total transposition to the center.

But what is the cause of the Atlantic in its own nature & I conclude more fully & with all the above said decides the presence of the earth. Neither of the Atlantic provides for this case in turn. To prove then that there are two other radii of which the Atlantic is the construction of the Atlantic is what is to be done. I believe it is better to prove right than left action. Successive first to the successive half and then of the other to be executed action. The execution of the other can have no concern with it. For on the contrary of the other side it is to be executed, the other parts become and left in the action which is the same as in the operation of the total transposition to the center.

Page 9.  
To Page.  
Page 109







Richard Harrison

not found  
Vols. 606-7

Secondly, we have no objection to the Board's decision that the debt in such case should not support a divorce on the ground that the union was a civil contract and is so considered in all the legislation. The Board in that case did not distinguish between a divorce to evidence, and a divorce on the basis of an instrument, things which were not self-evident.

It will be recollected, that I have before observed that misnomer as such, can be taken account of in an instrument. But if the misnomer works a variance, it may be taken account of, not only in a statement, but in either of the two ways which have just been mentioned. For example, I execute a bond in his own name, on which I set down in the name of B, now as a misnomer. This is sufficient to rebut, even as in the case of a written instrument, a counter one. The misnomer causes a variance, and a counter statement is admissible may be taken account of, in the same manner as other cases of variance.

Misjoinder & non joinder  
of parties.

1. *Of Plaintiffs.*

187. a.  
189. a.  
195. b.  
198. a.

Lib. 4.  
P. 243.

... 291.

[illegible]

P. is a general rule that I use me above when the right of action is in several who are not one it is always inadvisable in settlement. P. in the case of P. is always must be.





## Plead and Pleading.

In this case the defendant also on one and the same subject is a defendant. In the other hand suppose there were one where one only was contracted with, and I make a promise to A and he sues B in the action, I may take advantage of this under the general issue for the promise was not to them but to A only, and will not therefore support the declaration.

The following criterion will, I think, enable you to determine when advantage may be taken of mistake of this kind under the general issue and when it must be by abatement.

Whenever the objection arising from nonjoinder, or from misjoinder will support a general issue advantage may be taken of it, under the general issue. But when it will not support a general issue it must be pleaded in abatement. According to the first general rule, the objection may always be pleaded in abatement.

I will now examine the distinctions in this subject, in reference to this criterion. The true principle is as above explained. It has been observed that in a case, as contracts, when the right of action is in test and one sues several, the want of joinder may be taken advantage of under the general issue.\*

\* The propriety of this rule is questioned in Williams's Assurance Cases, since it has been observed that the nonjoinder of all the parties is not a defect in the declaration, but must be pleaded in abatement. (Coke, 73 m.)

Where one co-partner has withdrawn his name from the firm, yet still retains part of the profits, he need not be joined. It is true that by receiving the profits, he is liable



Had any Plaintiff

Declaration that there has been a seizure relative to the ransom from what has already been said is applicable. And from such alone there can be no supposition to be drawn, in fact, the mistake must be location in abatement. Why may it not be taken advantage of under the general issue? Likewise, the objection arising from the nonjoinder will not support the general issue.

But if two persons sue in an action on a tort, where the right recovery is in one, advantage may be taken of it as well under the general issue, as in abatement, for here the objection

Bay. v. Ward  
Sup. Ct. 1835.

5. Bac 200.

Co. 8l. 143.

6. Pl. 706.

does support the general issue. For ex. gr. A and B, being

Proprietors, against C for taking their horse, but B had no

interest in him, now though this may be pleaded in abate-

ment, yet it may also be taken advantage of, under the

general issue; for the complaint was that the horse belonged

to A and B, whereas B had no interest, and received no inju-

ry. The objection therefore well supports the general issue.

And here I would take occasion to observe, that if one joint

Pl. 279

3. Pl. 116.

2. Pl. 586.

622.

owner of a chattel sues alone to a tort, and the wrong does

not take advantage of the nonjoinder in abatement, the

other owner may afterwards maintain a separate action

against the wrongdoer, for his part of the damage paid, and

the judgment recovered by his partner shall be no bar.

This rule is a very modern one, no question of the kind has

come up for judicial determination, until the case when in Pl.

Thus far of the nonjoinder and misjoinder of parties. I will

now consider them, as relating to the Parties.



Third case Pleasing: Nonjoinder and Misjoinder of defendants

I have 2 two partners or joint debtors is suam et hoc He 574. 2. 18. 47.  
non joinder, as a general rule must be pleaded in abatement 674. 32.  
to the objection is waived. But there is an exception to the rule 386.  
if it appears on the declaration or other pleading of the plff that 2. 18. 35.  
one of the partners is indebted and joined in the action 382.  
is living. Then the objection is fatal and will support a demurrer  
or motion in arrest of judgment. An opposing opinion is given  
in 382 held: but the rule is now well established. Formerly the  
it was necessary for a nonjoinder of plff. Compare this  
rule with the criticism above this course. Why may not the  
objection be taken as a matter of course the reversal of the  
cause it will not support the general issue.

The rule is the same as to action on quasi contract 382.  
if a tortious wrong partly from one tort and partly from  
another, as a carrier a ship owner, for an injury to the  
plff goods arising from the neglect of the master. This  
sounds in wrong; but the ship owner is liable, inversum 382.  
of the implied contract. And therefore the action is said to  
arise on quasi contract. All the ship owners must be joined,  
but advantage can only be taken of the nonjoinder in  
abatement.

And whenever a defendant abates a writ for a nonjoinder of another  
and a second action is brought against both, the new 2. 18. 70.  
de Ponce pleads in abatement that another defendant still ought  
to have been joined. But this second principle is not attached  
to the former debt for he is concluded by his first plea in a-  
batement, and is deprived to have joined the first defendant.



## Joinder and Pleading.

To also, if two only, as three joint and several obbligees, are joined as debtors, it is pleasable in a statement. The general rule and the exception are the same, as in the case of the non-indivisor of two or more joint obligors.

If two are sued on a contract when one only is liable, an advantage may be taken at the misjoinder in our favor. For the objection is out which will support the averment. For example, an action is brought against A and B, on a promise made by A only. The promise now is different from the promise alleged, and if two are sued as joint debtors the bill must recapitulate against both, or not against either. There is then an essential difference, between the cases where two are liable and one only is sued, and those where two are sued, when one only is liable. For in the former case it can only be taken advantage of by joinder in a statement.

But if, in an action on a contract, against two, a verdict is given against one and for the other the former may arrest the judgment. A and B are sued on a joint promise; a verdict is given for A and against B. B may arrest the judgment.

And this rule holds, whenever in an action on contract against two the bill is drawn in any way, other than of right in an action against one of them. As if for example A and B are sued on a joint contract, and A pleads a release, and B the particular plea. If the release is found for A, and the general issue against B, B may arrest the judgment.

Pleas and Pleadings.

79.

Once when a plea has thus improperly joined two defects he cannot amend it by entering a note prosequi as to one <sup>50p. R. 47</sup> of them. For each of the defects has a right to a judgment in his favor, if there was no cause for the action, and the defendant shall not by his own act, be supposed to remedy a fault & occasion it by his misjoinder.

If two are sued for a tort committed by one only, the rejoinder of the other is not pleadable in abatement, nor can any advantage be taken of it whatever. The wrong done may be corrected, and the other acquitted. Torts are several as well as joint, and therefore if the declaration is proved against one, the plea is inadmissible to judgment against him, though the other should be acquitted. There is regularly no such time as misjoinder in tort.

50p. R. 33.

50p.

8 Co. 157.

420.

50p. R. 33.

The rule is the same where two are indicted for an offense of which one only was guilty. It is not pleadable in abatement.

So, on the other hand, if a tort is committed by two and one only is sued, he cannot in general plead the non-joinder of the other in abatement. As if, James B. you and I trespass, and I am alone sued, he cannot plead the non-joinder of B in abatement. They are both severally as well as jointly liable. To this rule there is a simple exception. Where one action runs against two or more persons jointly, they must be sued together, and the non-joinder of a party is not pleadable in abatement. Thus if two joint tenants are liable, an action against the

50p. R. 65.

1. James 291. 8.

2. 75. 152.

Com. 12. 45. 2. 1.

1<sup>st</sup> and 2<sup>d</sup> Writings.  
neglect of any duty arising from their tenure, as to keep  
open a catch, or repair a wall so they must be joined in  
the action, for the right of action arises from the omission of a  
duty. This is an exception to the case of contract.

There have been more moments and repetitions on this subject, be-  
cause it is intricate, & more in number, as well as a little  
more intricate than the other class of abatement. It is with  
effects much more fatal, for a defect of this sort cannot be  
remedied by amendments. The plaintiff will neither be allowed  
to introduce a stranger on the record, nor to erase the  
name of one who is already there: for in the latter case, the  
defendant has a claim on him for a bill of costs.

Relevance of a wrong suit.

3<sup>d</sup> Another ground of abatement is the pendency of a  
prior suit between the same parties for the same cause  
or thing. If I had brought an action against B, for a given

1. B. 13. I have now brought a second suit for the  
same thing, the second shall be abated, for the law ab-  
hors the unnecessary multiplication of suits. And why should  
the plaintiff have two actions, when one will give him redress?  
But to give effect to this rule both suits must be of the  
same kind, & at least concernment, and the parties parties  
the same in both.

Chanc. 418 539.

5 Co. 61. x. o.

4 Co. 43. a.

So we suppose to enable the plaintiff to join in the prior  
suit an abatement that both actions shall be of the same  
kind provided they are concurrent. Thus in a case where  
two parties have been concurrently injured by the same  
party, the plaintiff may have two suits for the same  
injury, the last suit must be abated as the first.

Plaintiff and Defendant

81

It is necessary then, not only that the causes of action should be the same but that the actions themselves should be concurrent. Therefore if the plaintiff brings two or more in a case where it will not be, and a decree of the jurisdiction of the writ, in favor of the plaintiff, the latter would still not be stated in the venue. For the rule to prevent the unrecovered same harassment of the defendant will not here apply. And if plaintiff is obliged to wait for the issue of the mortgage action, (which will be afforded him a remedy) before he can bring another. Art. 44.

To illustrate what I mean, <sup>by the various causes of action.</sup> Suppose a mortgagee brings a writ of replevin against the mortgagee, and then brings an action on the bond to recover the debt for which the mortgage was a security. Here, the actions are different, and (though on both a writ out of the same law) the causes of action are also dissimilar. The pendency of the Replevin would not therefore affect the action on the bond.

The pendency of a prior action is a poor plea, though 5 B. 322 in a different court, from that in which the plea is made: 4, Mar. 48. 2, Wils. 87. Example, that in England, it is not a good plea if the prior action is in an inferior court. But the rule is here reversed. So in another State 3 Johns. 101.

As to the effect to the plea, it is not necessary, that the prior action should be pending at the time of making the plea in abatement, provided it was pending at the time of commencing the second suit. For the second was then overthrown ab initio, and as to the principle on which the rule is founded, it is an obsolete plea. And as to the question at what time the court shall be said to commence, Boyer says to 3 Co. 48. 2, C. P. 443.  
Prof. p. 1011  
4, Mar. 48.  
1, Bos. 13  
see 5, Mag. 174.  
1, Bos. 40.  
6, 8, 107.



1790. 41  
52. 81. 577  
5. 61. 48.  
1. 61. 49.  
3. 1800. 1423  
5. 61. 482

## Plas and Plashing

The rule Plas above under the head of acceleration. As to this purpose, it commences from the time of the issuing of the writ.

It has been very properly determined by our Sup<sup>r</sup> Court that if the first writ is from any cause wholly inoperative, the second shall not abate. Thus, for example, the bill finding his debt in indisputable circumstances, attached property for that debt, which he afterwards discovered not to be the property of the debt, it was held that a second writ in which the debt property was attached, was not abated by the first. For the second action was not accelerated but was brought to do justice to the bill. So also where the property first attached, was of no value, it was held that a second action brought to secure the bill did not abate.

The rule is the same if the first action was clearly misconceived. Thus suppose that, through the ignorance or mistake of an attorney, in an action on a bond, the creditor was in error. The bill could not recover, and therefore must bring down the benefit of the first, an action of Abt. Unless the second action can never be accelerated that it shall be abated, unless it is unnecessary.

Suppose in a case where the defendant will be the bill has brought down. The proper action brought afterwards will not abate for the first was clearly misconceived.

It has been determined in Domestic, that the perpetuation of an action of not debt by a second action is not precluded from sums. It is the same form of action. This rule

Plas and Hastings

leaves some analogy to the principle we are now discussing, and is therefore introduced in this place.

Now in Book sixth, either party however small his account is may sue the other, and he in whose favor the balance is found will have judgment whether he is plaintiff in the action or defendant. This decision was certainly a reasonable one. 1 Inst. 55.  
Suppose B had a book account against A to the amount of 100*l*. B brings an action of Book sixth. One of the grounds of this would abate a subsequent action by A. B might in the mean time put all his property out of his possession, and prevent A from attaching, or securing his debt.

This plea of the pendency of a prior action is good in abatement, though another judgment is asked in the second suit. 2 Inst. 1047.  
No. 13. 4.  
Sedw. 137.  
1. Pross. 7.  
A brings Trespass against B, and during the pendency of that action, brings another for the same cause, against B and C. B may abate the suit and it seems to be the better opinion, that the plea is good for both the defendants.

If also if the first action is against two defendants and the second, only against one, the pendency of the former, will abate the latter. Thus, during the pendency of an action of Trespass against A and B, the same party brings a new action of Trespass, for the same injury, against A only. The second may be abated, for though it may be that A was the only party to the first, yet that cannot be tried in the plea. And if it is true, a recovery may be had against A only, in the first action.

What is a pleading?

Allyn 54.  
Felt 5 F. 250.  
1790, 14.

But where the second action is commenced, on the same day on which the former stated the writ shall be presumed to have been sued out after the abatement, and shall not, therefore, be abated.

It is no cause of abatement that another action for the same thing is depending against a stranger. This case does not come within the bond of the rule, for the parties here are different. For example, if A sues B for a service B sues C the pendency of an action for the same injury against C, shall serve to postpone an abatement for B, for if both are suable, A had a right to sue A and C, and if neither are suable he had a right to sue the question.

The general rule does not apply to indictments. But also the indictment is depending against the party for the same offence, is no bars in abatement of a subsequent indictment. Both, however, are not proceeded on. The Court may in its discretion quash one of them, and repeatedly will quash a bill the first. In the case of indictments, the Court has a kind of discretionary control over the proceedings for there are cases in which the public only are concerned being prosecuted in a grand jury, and the jurors are considered as the conservators of the public peace. Thus it is otherwise in civil cases and in criminal cases where the prosecution is by appeal or information. Then the jurors have no such discretion and power and of course the plea would be good. In the case of an appeal or information, an individual is concerned and therefore, the same rule governs as in civil cases.

1790, 13.

2. Hawk. 190.  
275, 367.

Read and Re-aring.

It is a rule that Two informations for the same offence  
are admitted by two different persons on the same day, each  
states the other and their own, to be final, and inconsistent.  
See. In both are deemed to have been commenced at the same  
instant. The reason of this rule, as given in the maxim that  
in local contemplation there is no fraction of a day. For most  
purposes, a day is considered as a more precise temporal  
instant of time. Thus in many cases this maxim is  
suspended with, as in a former example where a witness &  
was sworn on the same day, on which a prior one abated.  
But why it may be asked, is it not suspended with in  
this case. I answer, because prosecutors by information,  
being more collective, claim no individual justice there  
is no inequity in adhering to it. "In fictive juris, con-  
sideratur." Where a clear case of justice requires it therefore, then  
habitus of law may be rebutted.

Unlawful issuing of the writ  
Irregularity

8<sup>th</sup> The unlawful issuing of the writ is another cause of a void writ  
and so, in general, is any irregularity or informality.  
The writ Quia writ is made returnable to any other than  
the next succeeding term where there is subpoena. I think, it is  
abated, may more, it is for the writ, and the writ is  
executed it is a Prosepro. The reason why the writ is con-  
sidered absolutely void is that the making it so is the  
only way in which the writ can be sure of redress. For if the  
writ is returnable to the next court but one, it may be re-  
turned 20 years hence, and in bailable cases this principle  
would be most dangerous in its operation. If the writ should

Held P. 2.  
128. 864-5  
2. 128. 864-5  
D. 23-  
3. 128. 864-5

Laurel 125.  
Com. 125. 126.

3 Wils. 341.  
Jek. 790.  
1 Mod. 315.  
360.



## Writs and Return.

be committed <sup>to the prison</sup> & if the writ was only returnable or abateable, and not merely void. Then for that whole space of time he must either be confined in custody, or be seen to bail. This would be a most monstrous doctrine. It is necessary therefore, to prevent oppression of this sort, that the writ should be holden strictly void.

Secondly, if the writ is not issued by proper authority, it will abate; and not only so, but it is strictly void. A writ not authenticated by proper authority, is no writ at all. In legal contemplation it is merely blank paper. If returned, it may be abated.

1. Show. 80.  
1. Rev. 2.  
2. Rev. 80. 592.  
1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

Under our Statute, if there is no certificate of sanity, the writ is not only abateable, but void. It is impossible to recite all the causes for which a writ may be abated. If it want a date, or has an impossible date, or is directed to an improper officer, or has no direction at all, or if it is returnable to no Bench, or to an improper Court, or has an impossible return, and for a possible variety of other defects, it is abatable.

If there is a defective return the writ may be abated, that is if there is a want of sufficient time between the issuing and the return day of the writ. Now the general rule in England is that there must be 15 days between the return day, and the date of date. If therefore it is made returnable within a less time the writ is abatable. For the length of time in England see the 32. 62. 188.

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

According to our Statute the writ must be served with a writ returnable to either of the higher Courts 12 days (inclusive of the day of service) before the return day.

Prison and Penitentiary

97

It is reasonable to say a simple arrest may occur  
since there is no such safe danger. It is for the part of the  
reason of the court. It is a simple arrest. It is a simple arrest.  
he is arrested 4 days before the day on which they are return-  
able, and with in which communities are safe Prison, which  
includes either of the days of service, or return, but not both.

Now in England, if the service is defective in the first  
of it, this is practicable in a salutary manner. But if it is good <sup>It is 813.</sup>  
the first of it, it cannot be salutary, though, in point of practicability,  
that is, if a defective service is, in a false return,  
made to appear good. The defect cannot contravene it,  
as to repeal the writ. It is practicable that in England in  
a case where safe notice is required, the defect  
really serves the writ only five days before the return but  
includes safe. The defect cannot contravene this return.  
But in this case he is clearly injured. He can have his  
remedy against the defect for a false return. The rea-  
son why he cannot contravene it in the other case is  
that in that suit the defect is not a party, he might  
therefore, be subjected by evidence of false return in fact  
the return was true, not being a party to the action, and  
of course having no opportunity of proving it so.

In Connecticut, however, the rule is different. Here if  
the return is false, whether or on the last day or not, it is  
salutary. The defect is allowed to confer in favor of the  
return of the officer is prima facie evidence of its correctness.  
The notice is founded on more usage.

## Head and Headings

In Connecticut, if property is attached and an order is left, the writ will abate unless there is a return showing in return or in which latter case the writ may be pro-  
 ceed on as a summons though it will not hold the prop-  
 erty. See in our Statute where property is attached a copy must be left at the property is not holden.

The Statute of Connecticut requires also that when real property is attached, a copy of the writ with the execution must be left with the Town Clerk of the town, in which the land lies.

Thus the omission of this will not abate the writ, for it is no part of the service. The real object of the law is to give notice to those persons, and the consequence of the omission is, that the property will not be holden against third persons.

Another defect in the writ which furnishes a good cause of abatement is the want of a venue; as the want of a venue in the declaration furnishes a cause of demurrer. I have here already observed that every material fact must be stated with time and place. The venue (venue or residence) is meant the place where the cause of action occurred. Now in Transitory actions, the venue being of local force is no cause of abatement. Thus if in advertisement the prom-  
 ise is alleged to have been made in the town of Danbury at which it was made in fact in the town or county  
 &c. for the sake of form however there must be a venue though there need not be a true one. The propriety of the law relating to venue in England is now revised, I have taken pains to trace it in a manuscript of my own. I will the cause which the present law of venue has been set to rest.



Paris and London.

59

The rule of a venue arose from the consideration  
that the venue were to come from the neighbourhood  
By the rule of the Common Law therefore it was neces-  
sary to lay the venue truly for every fact which was  
to be tried by the jury, in the County in which it actu-  
ally took place. According to this rule if the contract  
was made in a foreign Country, it could not be tried in  
England and the manner in which it has been evaded by  
the artifice of judges and Pleaders, is singular and  
a decision. But the Story now is, that transitory ac-  
tions may be tried any where. I would except in  
Paris is undoubtedly a good cause of action in Westminster.  
Hall and the venue is now laid in this manner: "That  
the defence in the City of Paris, in the Empire of France, viz  
in the Parish of St Mary le Sec in the City of London and  
County of Middlesex. In these actions the venue is not  
traversable and the judges are to understand that  
the City of Paris, or any other place in the world, is situated  
in the middle of the City of London and of the Parish of St Ma-  
ry le Sec.

In local actions however a false venue is a good cause  
of abatement. Thus if a real action is brought in the County  
of D. it is pleaded in abatement, that the land lies in  
the County of B. For the rule is, Loc. act. loc. sic - D. 34.

That the action is misconceived, is another cause of  
abatement. Thus where the plaintiff in case where it is  
manifest from his own declaration, that the action is  
misconceived.

2 R. 23.  
425. 244  
3 R. 329.  
Lam. 74  
R. 11. 569

Edm. 4. 220. 17.  
1 R. 34  
Stat. 1. 34.

Action misconceived.  
Edm. 4. 220. 17.  
Lam. 74.  
R. 11. 569.



## Plea and Abatement

Febl. 189.  
Lamer. 106.  
Am. ci. 26 § 5.

That the action ought to have been tried; it is pleaded in a  
abatement, though it is generally taken advantage of on  
demurrer

Cause of action not  
accrued at the com-  
mencement of the suit.

10. Lastly, another cause of abatement, is that the cause  
of action had not accrued, at the commencement of the suit.

Febl. 189.  
Am. ci. 26 § 5.  
Lamer. 114.  
Febl. 189. 325.  
1. Nov. 27.

This may also be pleaded to the action; it is immaterial  
by is made to the action as in abatement; and if it ap-  
pears on the record, it will support a demurrer, or motion  
in arrest of judgment. For example, if an administrator be  
brings suit, it is a good plea that the will was not proved  
before administration granted; for as to him, the cause of ac-  
tion has not yet accrued. But when the cause of action has  
not accrued at all, the usual way is to take advantage of it, un-  
der the general issue, or by plea in bar.

Having presented all the enumerated causes of plea  
in abatement; I will now suggest a few remarks as to  
the mode

Febl. 303.  
Lamer. 139.  
106.  
Am. ci. 26 § 5.

Plea in abatement, regularly begins and concludes with the  
word or as the case may be, in a few instances, to the action.  
And the form of the conclusion is by praying judg-  
ment of the court, that the same may be quashed or abated.

Lamer. 108.  
Am. ci. 26 § 5.

When however, the plea is to the form of the deed, as over-  
ture it concludes by praying judgment whether the deed ought  
to survive. This is more matter of form, in pleading.

Am. ci. 26 § 5.  
Lamer. 118.  
109.

When the matter of abatement is or is not the usual  
cause is to conclude and not to begin, as praying judgment.

11.

When the will was not proved etc, without plea, it is concluded.

What is a Pleading?

is, in any respect, a better. The Court will further Lamer 187.  
proceed.

The character of a plea is said in some books to be  
decided by its substance, without regard to the substance  
of the pleading. This however does not appear to be  
the true rule. It is said to be the substance of the plea,  
as determined by the beginning and conclusion. These together  
form the decision. This rule when applied to a plea of abatement  
is certainly the correct one. This rule and a similar one  
of this description seems to have been given in such language  
as if it was intended that it should not be understood.

The meaning of the rule is this: When the beginning and  
the conclusion are alike, they are decisive of the character  
of the plea. That reference to any thing else. Thus, if a  
plea both begins and concludes in the form of abatement it is  
a plea in abatement, if it begins and concludes in bar, it is  
a plea in bar.

Hence if the matter pleaded is only good in bar, as a release,  
yet if the plea begins and concludes in the form of abatement  
it shall be regarded as a plea in abatement. Thus in case  
case, where the matter is in bar, if it begins or concludes  
in bar, it is a plea in bar. Case vs case, matter abate-  
ment, the rule then. If the beginning and  
conclusion differ, the matter must be taken to the effect of matter  
to ascertain the character of the plea.

The whole tenor of the rule then may be reduced  
to these propositions: 1. When the beginning and conclusion

## Plea and Pleading

are both alike, they absolutely obscure the character of the plea without any reference to the subject matter. But when the beginning and conclusion differ, then and then only, must resort be had to the subject matter, to decide the character of the plea. And the difference between the characters of pleas, is important, for they are different in effect.

2. But there are cases (as for example outlawry when the cause of action is forfeited) in which the subject matter of the plea may be good in law or a abatement. Suppose then in this case, the beginning and conclusion differ, the subject matter will not determine the character of the plea; the plea may, at his election, answer it as a plea in law or abatement. There are the true distinctions, cause though insignificant. It finds them explained in the books, I trust, they will come where be recognized as correct.

2. <sup>supra</sup> 1153, 57.  
2. 107, 116.  
Lives 134, 7.

For the proper plea in abatement see the authorities in margin. Ravi o make these remarks observe. That a plea in Abatement founded on matter which goes in bar only, is not good; and so, concesses. Thus if noninver should be proposed in law, or if release and award payment, according to abatement should be proposed in abatement, the plea would be overruled.

have 134.  
Don't. 1153, 57.  
Don't. 1153, 57.  
Don't. 1153, 57.  
Don't. 1153, 57.  
Don't. 1153, 57.

I don't may not please at once two dilatory plea, or two different causes of abatement, to the whole writ, or to any part of it. From an expression of Lord Coke "That the rule prohibit

Clear and pleasing.

"Whence a multitude of distinct marks to be placed to one  
and the same thing extensive only to pleas peremptory for  
exception, and not to pleas dilatory for that in their issue  
and place a man may use either of them." It seems to  
have been supposed in Connecticut and Massachusetts that  
duplication in dilatory pleas was no fault. But I take this  
opinion to be wholly unfounded. How much is true, a good  
man please does bind all the dilatory pleas in their order.  
This is what was meant by Lord Coke, and he never meant  
more than the defendant pleads two causes of abatement  
at the same time, for the same thing. But I take to be the  
true rule and that the deft shall not be allowed to begin with  
to plead at the same time, a misnomer of himself and of  
the plaintiff. Nor indeed can any two of the same class be pleaded  
at all. There is certainly no <sup>more</sup> reason why duplicity should  
be allowed in pleas in abatement, than in pleas to the action.  
Successive pleas in abatement are odious to the law.

I will now consider the effect of a plea in abatement, when  
pleaded and the judgment on it.

Error lies, as well on the judgment on a plea in abatement  
as upon the judgment in Chief, though not until after judg-  
ment in Chief. The law could not allow the deft immediately  
to bring error on a judgment merely interlocutory, for  
preval in the action. But if he does not then he may bring  
error on that judgment in abatement. But on the  
other hand, a more matter of judgment is in a judgment. Error  
which is was pleaded in abatement, he shall not be allowed to

2. Rich. 334. x  
1. Bar. 15.  
Easter. 2. 9.

2. Rich. 116.  
1. Bar. 116. x  
3. 1. 5. 6.  
Easter. 116. x  
6.

3. Rich. 15.  
1. Bar. 116. x  
Easter. 116.  
Easter. 116. x



Pleas and Pleadings

27 Mar. 1871.  
6 S. R. 760.  
S. R. 124.  
S. R. 374.  
S. R. 240 & 7.

It is a rule of law that in every case, where a party is allowed to plead in abatement

28 Mar. 1871.  
2 S. R. 544.  
2 S. R. 53.

But where matter may be pleaded in abatement of the action the advantage is not waived by not pleading it in abatement, and it may be afterwards pleaded.

Talk 2.  
S. R. 283 & 7.

It is an action of assumpsit, and a judgment the defendant allowed to plead even in abatement some things which he might have pleaded in the original action. Because it would merely be unnecessary to allow it, but if the defendant pleads to the assumpsit some thing which would have defeated the former action, it would be virtually an impeachment of the former judgment. For that implicitly negates all facts which could have been introduced to support it. To suppose for example that the defendant was a minor and a defective person, it would be an impeachment of the former judgment. The defendant is an entire person. He is a minor and a defective person in this sense the defendant implies that he is not the same.

Law 1871.  
S. R. 180.

I will now be abated by the assumpsit and the assumpsit, even when the plea in abatement is itself pleaded to the whole. Suppose in debt a minor. For this reason it is not a plea. If it was a creditor, the debt of the assumpsit or to the whole, the debt will abate only as to the bond or a third part ought to have been a plea. It is an assumpsit to the assumpsit under the head of a plea.

Law 1871.  
2 S. R. 180.

But the assumpsit is abated to part of the assumpsit. If he is a minor in the fact example he must have limited his plea to that part which was abatable.

Plas and Pleasing

115

To the affirmative place in statement with path, and in law  
as to the residue, as in an action on two promises, he may have 152.  
place in statement as to one for non-payment and non-  
payment here as to the other.

As to the operation of joint statements the most common  
thing to be considered is the sort of judgment to be given  
thereon and the effect of that judgment.

And here I observe that in a joint statement, it is not  
regularly as to the merits but as to the veracity of them  
as to a substantial action in the same cause. The reason  
is obvious. I cannot put myself in a case to answer a motion on  
the ground that the merits have been tried, since the law  
allows a multiplicity of suits. But in Plas in statement to merit  
has not substantially been determined.

There is an exception however to this rule when the judgment  
is in law on a joint statement and on the legal grounds  
which will be mentioned hereafter, in law.

It is usual on a Plas in statement, when in the affirmative  
that the court be directed whether or a case. Plas in law the  
Plas in statement is veraciter or otherwise, the veraciter is  
for the Plas not found but that the veraciter is  
a veraciter matter as to the veraciter.

But when an affirmative Plas is found by the Plas in statement  
statement, the court is to be directed whether or a case. Plas in law the  
Plas in statement is veraciter or otherwise, the veraciter is  
for the Plas not found but that the veraciter is  
a veraciter matter as to the veraciter.

But when an affirmative Plas is found by the Plas in statement  
statement, the court is to be directed whether or a case. Plas in law the  
Plas in statement is veraciter or otherwise, the veraciter is  
for the Plas not found but that the veraciter is  
a veraciter matter as to the veraciter.



Another rule that after a moment's delay the defendant  
is obliged to take a plea. But if a dilatory plea given at a  
plea only to the action. But if a dilatory plea given at a  
is overruled, the defendant shall take a dilatory plea &  
appears of a subsequent stage in the course of pleas-  
ing otherwise the rule is too strict, and the defendant is  
worse of them in their proper times and places" can have  
no objection.

But after judgment that the writ is not, and amendment  
by the plaintiff, the defendant pleads it a gain, and dilatory  
plea, of the same or some other plea. In the amendment  
maker is a new word, and the defendant may make some  
new mistake. That unless the amendment has raised a  
new occasion, the defendant is stopped by his former plea  
from coming in with a new plea, which he has waived.

It is a rule that after a several im-  
parlance, the defendant cannot plead in abatement, unless  
the cause of abatement has arisen after the plea. The  
rule is that by a general imparlance, all exceptions & more  
matter of abatement, is waived. What is a general, and what  
a special imparlance, may be seen in the authorities cited.

General imparlance contains this or the like words, "saying  
all advantages as well to the jurisdiction as to the writ and  
declaration." It is not a several imparlance, contains no  
saving words. In a several imparlance, there be, the  
defendant takes his exceptions at the next term, after the  
continuance is over.



## Abatement & Pleading

Sec. 777.

Ord. p. 29.

Lamer 1, 2-5.

So long as the rule by pleading in abatement, takes effect, the defendant will be allowed to plead, except a new cause of abatement has arisen afterwards. The time for abatement of the rule is meant the time limited being not within a year, all pleas in abatement must be raised.

Sec. 21, 22, 23.

So the time is always after the commencement of the term.

Sec. 554.

Ord. p. 29.

So the time allowed in the Superior Court is, until the opening of the Court in the afternoon of the second day in the term. In the County Court, the day is allowed to plead in his plea in abatement any time before the opening of the term.

But the resolution in new practice is no other, when the law continues an action from one term to another, as in the case of foreign attachment the Statute expressly requires that the action shall be continued from the first day of the term to the next. In such case, therefore, the defendant is to plead in abatement — nor in such is he expected to appear at the first term. And therefore he is allowed the same period in the second, as in ordinary cases he would have had in the first term.

Sec. 777.

Ord. p. 29.

Lamer 1, 2-5.

and then on all the points.

And further it is a general rule that matter of abatement cannot be pleaded after the rule is set aside, if it appears in bar, and then it is to be pleaded not in abatement, but in bar. Thus in the example of subpoena where the rule is dissolved a forfeiture of the cause of action, or rather, in bar of ab.

There are a Plea in

27.

statement of pleas as a dilatory plea, it must be shown  
within the rule book of pleas as a dilatory it may after  
wards be pleaded in bar.

For a statement of means used ago in the case of *Don*  
that a plea is a statement of answer to be the effect of  
conceded to. But that is not the modern practice; it is <sup>now</sup> ~~now~~  
now considered as traverse. But in truth it need not  
not to be considered, as traverse at all.

It is said in some of our Practs, that there can be but  
one plea in bar continence, after the first continuance,  
or if new matter arises after the rule is set. The rule  
is said to be made that the defendant not be relieved as <sup>file 6. 174.</sup>  
in indictment. The rule is said to be a rule <sup>Lower 174.</sup>  
well as a rule continence. For if new matter arises  
the second plea, the defendant contains such to have an  
opportunity of pleading it. The rule is laid down in Ed. 3. 1.  
and has been adopted by Lower. I have seen it in the  
book.

I have now considered my remarks on dilatory pleas  
and proceed to consider Pleas to the action.

Pleas to the action.

II. Pleas to the action or Pleas in bar, are of two kinds, the general issue, and special pleas in bar. The general issue is well as a special plea to the action, is a plea in bar. It would hardly have been necessary to state this, were it not, that in common parlance, the general issue is often mentioned as distinct from a plea in bar. Every plea which denies the action, is a plea in bar.

The word issue, in the law of pleading is defined to be some certain and material point in controversy between the parties and consisting respectively of an affirmative and negative. I can find no authority, that it has been copied into all the books on this subject, a mistake, — not however to any so far that be very plausible. The word material which is introduced into its definition from the similitude, in the law, necessarily a material point, all the learning in the science of immaterial issues, is added. The great and ultimate object to which the whole system of pleading — a system of wonderful ingenuity and apparatus is directed, is to bring the parties to a convenient issue.

According to the able and judicious of the common law, there under be two issues, be a direct affirmative and a direct negative; and so in several places the rule at this day. So that we ought to see affirmatives as two negatives. Though not a variant to each other, cannot constitute an issue. Since it has been observed in a treatise

L. A. 126. a  
1. Inst. 219.  
2. Inst. 152.  
3. Inst. 278.

Black and White

181

your remark that H. is mean and the other that he is, Vint. 213.  
neither seems so idle. The latter should have pointed  
out that H. was not mean.

But this rule has been a little relaxed. In a case in  
the Common Pleas in England it was determined that sa. 1. 886. 6.  
to a plea that the def<sup>d</sup> that he was born in France, a declara-  
tion that he was born in England, was sufficient to bar sa. 1. 886. 6.  
an issue. And in that case the Court said upon the rule,  
that if the averment here is so contrary to the fact that  
the fact cannot in any degree be true, the issue is well  
pleaded. But I feel very satisfied that that Court would  
not have carried so much their doctrine. The plea would  
be overruled, but he was born in England, aliquo loco with-  
out this that he was born in France, and so in the former  
example, the Court should have been traversed in the same  
manner.

And a writ of right induces the general rule, and that of  
two affirmations. The single fact forms, — and as always has  
formed, — an exception to the general rule. And for the reason  
(that there is not a desired affirmation, and a desired negation,) 3 B. 345.  
the point is not called verdict in the single 2 B. 177.  
of the issue, it proves the issue. The Court must intend  
that he has more than one, want only the plea of the  
fact that he has more than one, to prove the issue.

I think, myself, that it is to be lamented that this  
rule ever should be relaxed in any degree, or tends to  
looseness, and there is certainly no reason for relaxing





The general issue is a denial of all the material allegations in the declaration; or in other words it is a general denial of the whole declaration. And therefore it is a denial of the whole.

To set, 120a.  
3 M. 505  
Lam. 1213, 145.

A partial issue is one which denies some part of the declaration; or in other words it is a denial by the defendant of some particular part of the whole declaration.

But issues may be taken on the pleas in law. Thus the declaration: "There are certain issues, more or less, and the addition of general or special. There are also several when they are taken to that to which the general issue might be taken. Thus a denial of the plea in law is called a denial issue."

As a strong foundation on any particular case, that is, on any wrong or not "not guilty," is regularly the general issue: "I do not or simply 'not guilty,' not guilty, to do. On specially non est action, I do not or receive money, or non est, multa non est; I do not or receive money from you, to do. To set, 120a. count, never will or never receive money or to the share in the declaration; I do not or receive, "not guilty" 3. Cont. 466. to, that being a non est action. I have never seen a form on the warrants or contracts, but take the general issue, to be non warrantum & non est. (Lam. 1213, 145.) of the covenant of warranty in a deed. There are distinct things. To a writ of Replevin though that extends in fact, the general issue is "non cepi," so that the rule that, non est



Mass. & Maryland

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Topic is the general issue, but a particular issue in fact  
concludes to the country. It is, however, to be seen by <sup>20 L. 1000</sup>  
the admission of the issue, in admission of fact, <sup>20 L. 1000</sup>  
as not in the same, but the Court, by the issue, at the same  
time, do by way of law or in way of admission.

I observe that regularly, the general issue concludes to the  
country. It does not, universally. In Common Law, the Court  
may try an issue in fact, in several other ways, as by  
pleading where the plea is in malitiam, by implication,  
where inference is in issue, or by verbal evidence, or by con-  
trabande, or a plea of unquies admittit, where a marriage  
is in controversy. However, trials of this kind are so  
seldom that the rule which has been given may refer  
to be laid down as a general one.

The general issue of malitiam concludes in a man-  
ner peculiar to itself, with a modification through a more in-  
formation, or denial of the plea admittit. See for a reason, <sup>2. Wb. 113. 14.</sup>  
good reason, because the record by which it is to be tried, <sup>1. B. & R. 411.</sup>  
is matter of law to be shown to the Court. Then the plea  
affirms the evidence of the record and prays the inspector  
by the Court and thus the issue is formed. <sup>1. B. & R. 411.</sup>

As to the mode of concluding plea, as I have given the rule  
of the Court. In Connecticut in all civil cases by a plea, <sup>20 L. 1000</sup>  
event, the parties may show plea in fact to the Court. <sup>20 L. 1000</sup>  
The case need be no without consent, and it must be  
appeal on the record or to a removable. The usual mode  
of showing the plea to the Court, and of the, by a plea, <sup>20 L. 1000</sup>  
himself in fact.



## Plaid and Plaidings

Suppose an old man or woman in England the owner of a house  
conveyed to the Duke, for he has no power to convey a freehold.

3 Bl. 313 The form of tendering an issue in fact of the traverse is  
from the Def<sup>t</sup>: "and of this he puts himself on the country."  
On the other hand, if the traverse is from the p<sup>l</sup>y, and  
this he "trays may be enquired of by the Country." The reason  
of the distinction is, that the p<sup>l</sup>y is not tried, and there fore  
has no cause for putting himself on the country.

Jaime 1478. And in either case, the issue is joined by a similitudo from  
to 2 Bl. 126. a. the opposite party, "and the p<sup>l</sup>y, or Def<sup>t</sup> (as the case may be)  
avoids likewise." This is called a similitudo.

There has been a good deal of contradiction in Eng<sup>l</sup> as to  
the effect of omittendo the similitudo, whether it is aided, by  
verdict or not. The English rule undoubtedly is, and Lord Hale

Just. 487. holds or presumes himself much ashamed of it that the want  
1. 3 Bl. 319. a. of it is fatal and will support a motion in arrest of judgment  
2. 3 Bl. 311. after verdict. This question has been agitated in the 10th, 11th

2. 3 Bl. 312. and a Rep. and of course in this State and the result was there  
decided to be decided by averdict. There was an occasion to  
depart from principle, to establish it in Commerce, for  
on the same principle on which it has been decided in  
Eng<sup>l</sup> to be fatal, it is also so in Conn<sup>t</sup>. The circumstance  
will be noticed in the case cited in Day. In Eng<sup>l</sup> the judges  
are so dissatisfied with their own rule that they evade it  
almost without any appearance. For in case in town  
per, an et cetera being discovered below the signature of  
the attorney, the Court held it to be an imperfect similitudo.

Plasencia Museum.

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... is no part of the advantage it neither affords  
nor denies any matter of fact. And though in English the  
name a sort of artificial reason for divine importance  
to it, that reason does not apply here. This would be a  
written memorial of the fact that the party consented  
by the cause in that particular way; and after the  
it is perfect, is not that consent sufficiently in order  
By the form of a Council, in no instance, it is  
admitted; and in E. C. I think, it is sufficiently in  
order.

The issue always upon the objection in a case of <sup>Col. 262.</sup>  
induced by one party, is much to be regarded in the <sup>Stam. 338.</sup>  
or. If it is not well tendered, it may be deemed <sup>Carth. 88.</sup>  
to a party is not bound to give in an immaterial <sup>Cont. 86.</sup>  
issue.

The formal words modo et forma, in manner and form  
usually inserted in every issue, are sometimes of the sub-  
stance of the issue & sometimes, modo et forma  
only. And it is of importance to ascertain when they  
are of the substance and when not. When they are of  
the substance of the issue they draw in question the cir-  
cumstances which are alleged to have attended the trans-  
action. But when they are modo et forma only they  
do not draw the particular mode or manner in which  
the facts are stated to have occurred. Lord Coke has given  
a rule on this subject which to me is perfectly sensible.

# Read and Reading?

There is a rule of reading, which is not to be read  
with any other than the eye.

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Volume 29, page 6  
Lancaster, 1810.

The old doctrine is this: These formal words so set out in  
since the circumstances of time place and manner, which  
these circumstances, are material and necessary to be pro-  
ved a fact. For example, in *Boas and Bathurst*, the *pliff*  
states that at a certain time and place in the system of law  
made and with clubs, and swords, and knives, so that and  
denied the *pliff* to his claim, or so, the *def* pleads the con-  
tradiction, that he was not with in manner and form  
as the *pliff* in his declaration has alleged. But this plea is  
not in issue the ballot, and not whether it was committed  
by a club or sword, or, for though it is not alleged by the  
*pliff* and if he proves a ballot in the fact, he supports his  
declaration.

In the other hand when the circumstances which are  
alleged to have attended the promise, as fact are mate-  
rial, they are put in issue, or in other words denied by their  
formal words. For example the *def* pleads in bar a def-  
ence by deed, from A to him, the *pliff* in his traverse, al-  
leges that he suggests him not of formal. Here the *mat*  
is material, and may be proved as fact. There  
was, there has been a suggestion by deed, so that a fact  
must without deed, and may be proved, or found by the  
jury. In this case then the use of the substance of the  
fact.





How and Pleading.

The meaning of it, as expressed is, that if the parties go to trial and a verdict is found on the issue, that that verdict is good. But, I think, it is not good, if found for the party traversing in the form of a negative judgment. And this I think will be very apparent. The doct. desires a release, since the date of the writ. The plff says he will not release since the date of the writ, leaving the implication, that he will release before the date. Now suppose a verdict is found for the plff, according to the terms of the issue, namely, that he will not execute the release since the date of the writ, yet he may have executed it before, and the same implication remains. The verdict therefore, is not decisive of the merits and the judgment ought to be arrested. But on the other hand if the verdict is for the doct. namely that the plff will execute a release since the date of the writ, it is very clear that the doct. has a good defence, and ought to recover, for it is the same to him whether the release was given before, or after the date of the writ. Therefore in this case, the verdict <sup>shall</sup> stand.

The doct of laws, however, is accustomed to some opinions has recovered this to a more correct of course, that it is now it on a special demurrer, and that the verdict seems to be a point, or rather a plea.

2. Jones, 3. 9.  
 3. 781. 247.  
 Carth. 371.  
 1. 24. 52.

The information shall is one with which I have no concern, it is not so obvious in construction and is therefore more involved.



What amount of evidence

3. Tol. 1. 252.  
3. Tol. 2. 223.

So, also, a factum in action is brought in a case more  
or less, non est factum is not the proper plea, —  
the special matter of avoidance must be pleaded.

It will be recollected that I am now treating of the  
common law rules, without reference to the law in equity.

So, also, if a bond is voidable, or even void, in any  
incapacity, not absolute in the obligee, the general  
issue is not the proper plea to take a case. For not

5. Co. 119.  
3. Hen. 8. 100.  
Ips. 496.  
How. 66.  
Holt 72. 166.  
Holt 675.

for example in an action on a bond, or indebitur must  
be given in evidence under the general issue, as matter  
of avoidance, it must be specifically pleaded, for the  
defendant must also plead in rehabilitation his in  
jury the bond is voidable or void in equity  
if not that it is legal debt arises from it.

Holt 72.  
2. Tol. 100.  
5. Co. 119. a.  
6. Tol. 223. 4.

And, indeed, it is a general rule of the common  
law that if a specificity is made void by statute non  
est factum is not the proper plea, the special matter  
must be pleaded, or it cannot be given in evidence.

For the same reason the act of seizure top of oral  
alteration and want of complete delivery as a deed,  
may all be taken account of under the pen. fine,  
non est factum, for they all go to show, that it is  
not the right act or deed. Now to take the last instance  
first. If, in a deed not delivered or not at  
all, for a legal delivery is essential to the existence  
of a deed. in equity the same act or deed, the same act or deed  
is certainly proper, for though the debt or act or deed is not

11. Co. 27. a.  
5. Co. 119. a.

11. Co. 272  
5 Co. 1192

It is not a deed, for the want of a seal.

It is not a deed, for the want of a seal. And if there is such a recovery as well as the effect of the deed, non est factum is clearly proper, for in the supposition, it makes it not the deed at all of the party.

There is general matter of fact only and not matters of law are in question under the general issue. This is a rule of the Common Law. To this rule, the case of a house by a fence covert is an exception, for in that case the fence is new matter - coverture - in evidence.

Whatever is introduced not for the purpose of proving a fact, but as matter of decision or, is called matter of law.

The difference between the two depends merely on deciding what is alleged by the party. There are some other exceptions introduced by Statute, with which at present we have no concern.

Having stated this much, with respect to particular cases, I will now endeavor to furnish you with the instructions regarding those things which are, and those which are not admissible in evidence under the general issue.

The general principle of the Common Law is this. If the defence offered in evidence is consistent with the plea it is admissible, but if not consistent, it is inadmissible. This rule I give on my own authority, but I am certain that in point of principle, it is a correct



## Mass and Pleasings

Consider this rule in reference to the examples, which have been given. If a married woman is seduced on her house, she may take advantage of the coverture under the general issue, because the law considers her house a nullity in point of fact. But an infant cannot take advantage of his infancy under the general issue. Because his disability not being total and absolute the law supposes that he can de facto execute the instrument, though his minority absolves him from all liabilities. Hence, cannot be given in evidence under the general issue, because the issue seems to exclude, but the defense admits it, though under such circumstances as to avoid the substance. Neither can recovery be made in that case, the judge admits the exception had no private matter of avoidance. For the other hand rare exception, both of fact and law, of seduction may be given in evidence under the general issue, because they all go to show either that there was no deed or that the deed being allowed, is not his deed. This then seems to be the correct principle and surely some criterion is very desirable.

Still it is a general rule in England, that in indictments a summons and a return in special assumpsit, that may be given or a plea show that the plea has no right to recover at the time of plea, pleaded may be given in evidence under the general issue as for example to answer the plea of non assumpsit the defendant may give in evidence

# Plaid and Plaidings

a release, payment, usury, infancy, &c. yet there, it would seem but first impression, do not go to destroy the promise, but only to avoid the duty. I will first apply the criterion which has been given, to the action of indebitatus assumpsit, and it will be perceived that this rule is founded on the peculiar construction of that action. In indebitatus assumpsit, the promise laid is not supposed to have been an actual one, but merely a legal consequence of the duty stated, namely, the indebtedness. Hence whatever disproves or extinguishes the duty also disproves the promise, for if there was no duty then no promise is implied. Thus under the plea of non assumpsit, you may, at common law, give in evidence duress, this it would seem at first, presupposes a promise, though not a binding one. But if the indebtedness was extinguished by the duress, there never was a promise. So, infancy, which may be given in evidence under non assumpsit, so, would seem to presuppose a promise, though a voidable one, but infancy goes to the duty or creation of the debt and when that is disproved, no promise will be implied of course. So, a release, when seen still more strongly to assume a promise, but there being no actual promise supposed, the extinguishment of the debt by the release, or its discharge or disproves any implied promise. This is the true ground of the rule as it respects indebitatus assumpsit.

That the same rule, in release, holds in actions

under Gen. Issue in Assumpsit.

1. Release.
  2. Payment.
  3. Usury.
  4. Infancy.
  5. Duress.
- may be given in evidence.

Sta 498  
3 Burr. 1553.  
2 Burr. 1310.  
2 Wils. 287.  
Rough. 38.  
2 S. 131, 141.

## Pleas and Pleadings

on special assumption where an actual promise is made. And here I agree there is a departure from the criterion which was given. The evidence admitted is inconsistent with the plea. For this reason I have always taken the liberty to doubt the original propriety of the rule as applied to express assumptions. And I have lately found that Chitty in one of his treatises, considers it a deviation from the principles of the Common Law. The practice however is so, and its adoption can only be accounted for, on the supposition, that the two actions have not always been distinguished by the judges, or confounded with confusion & mistake.

In the same sense, however, the Statute of limitations, tender, accord and satisfaction, and set-off must in assumption be pleaded, and this rule applies as well to impleaders, as to special assumption, though on principle one might wish to apply it to the latter. In a case in *Le Raym* 505, the rule is decided as to accord and satisfaction, but I deem to be well settled. The reason why a special plea is required is that it is matter of law which is not in denial of the declaration but in discharge.

It is true that either of these defenses is matter of law, but it is equally true that *payment* which is allowed to be given in evidence under non assumpsit, is matter of fact. Tender, accord and satisfaction, tender, or set-off, are no more special defenses, than *payment*, *release*, or *infancy*. Now then, has happened this mistake, in so

But. N. R. 2

Lick. 140.

1. Lev. 142.

4. 1000 50. 01.

Chit. bill. 192. 8

contra, not notum

1. Mox. 210.

1. Summ. 282.

note 2.

2. 1. 153.

Ch. 11. 118.

Tre. 275.

note 1. 566

note 1. 566

2. 1. 153.

Stat. limitations

Tender

accord & satisfaction

Set-off must be pleaded



Next rule - Leading.

reference to them? I trust the answer is true. That the rule was originally adopted in relation only to official assumptions, which, on principle, as was contended on the last page would have been correct, but has for want of proper discrimination between the two actions, been in practice applied to both. These speculations though they may be of no great practical advantage will serve to illustrate the principles on which the rule is adopted.

Iu debt an assignee contrast the Statute of Limitations, under the plea in evidence under the general issue. And the reason is the same as to release &c. it is consistent with the general rule. But Wood is in the present tense; it seems that the defendant is now indebted, both there and here, or to support the decision. But with the plea, non est factum as a specialty, he would be inconsistent.

2d Mo. 365.  
Lick. 278.  
1 Faunt. 282.  
note. 2.  
2 Lev. 215  
5 Mo. 12.

In the action of assumpsit, again, the defendant takes advantage of the Statute of Frauds and tries to show the contrary; that is, he may rely on the Statute of Frauds to prevent the bill from proving a promise required to be in writing; but his testimony, and when offered must be just to its admission.

1 Ju. 214.  
1 Mo. 249.

This course, which is given by the action of assumpsit, is a rule which is to be used in the case of a contract in fact, and more than in a promise.

In an action of assumpsit, it is not the duty of the plaintiff to prove



## Plea and Pleading

1300. 60. himself of a release, or of a license, or in denial of any mat-  
 1000. 174-5. ter of justification, no defence is in answer to it with the  
 1000. 174-5. excep. 490.  
 1000. 222.6. plea or plea and must be specially pleaded. For every  
 justification a fact presupposes its commission.

But here I observe that it is an universal rule that  
 every defence, which by the rules of law cannot be special-  
 ly pleaded, may be given in evidence under the general  
 plea as true and not true ways of pleading.

1000. 551. By Statute or Compendium under the general plea the  
 defendant may give in evidence his title or any other matter in  
 his defence or justification, excepting only a discharge from  
 the plea, or his acquittal or some other special matter in answer  
 to the plea. The act of the plea is saved or acquitted from  
 the plea's demand. So that in Court the concordance or in-  
 consistency of the defence with the plea is not the crite-  
 rion. I have been told that in the State of New York there  
 have a statute, on the same liberal principles. A great  
 inconvenience has resulted from this statute. For in  
 every case it is in fact a rule of law that the de-  
 fendant is a defence from the prosecution. To prevent the ef-  
 fect from being impaired by new matter introduced in the  
 defence the rule is, on the part of the Court, to make  
 a rule that when the defendant means to admit himself of a de-  
 fence which the Court saw required to be pleaded specially -  
 he must give reasonable notice to the adverse party.

Play  
 it must give  
 notice when he  
 pleads the Gen. Plea.

11th and 12th sections.

The 11th section in the Statute requires a distinct consideration. The act of the 11th here intended is some act which operates as a discharge or a right of action, once existing, in the words are "some act by which he is saved, or acquitted". Thus a release comes within the exception and must be specially pleaded. So also an award of arbitrators and a former recovery, for then being by the consent and agreement of the party is construed to be his act, within the meaning of the last clause. 1 Green 88.

See also Carter  
v. N. N. Haven  
Aug. 1812. 1 Burr  
Brooklyn, N.Y.  
See an analogous  
decision in 12 Wend  
case 1 Co. 118 a.  
1 Green 88.  
21 Wall. 570.

But any act antecedent to, or co-subsistent with the ultimate cause of action, which goes to show that there never was any cause of action, may be given in evidence under the general issue. Thus in *Truitt* under our Statute, death may pierce in evidence a license from the plaintiff was antecedent to the commission of the alleged wrong.

So also may discharge, infancy, and any thing which avoids the instrument from the beginning may be given in evidence under the general issue. It was some years ago determined in *Overton* on the ground of usage that usage must be specially pleaded, but that decision was clearly in opposition to the Statute and has since been overruled in the Exchequer.

1938-1857  
It is not also opposed to the  
Common Law rule in *Alington*  
vid. ante. 11 Exch. 100.

The Statute of limitations, in the action of *Writ of Habeas Corpus* as well as a writ of *Habeas Corpus* may be taken a discharge of action under the general issue for the discharge in that case is not by act of the party. It was also intended by Law that it cannot be under the gen. issue in a writ of *Habeas Corpus* because by act.

21 W. 115



I kept instead of the law, law may very very much  
favorable fact or allegation which goes to the aid of the de-  
fence, and is closely to the country; as, when, for instance  
the cause of action depends, as it almost always does, up-  
on a number of connected facts, the absence of any one of  
which would defeat the right of recovery, this is not com-  
mon though it is many times convenient as it relieves  
the plaintiff from the necessity of proving the whole declaration  
and confines the jury to a single point.

Com. at N. York  
to 2d, 282.  
4. Mac 50.625.  
Lamer, 71, 172.  
112.185.

The issue thus formed is called a special issue as contra-  
distinguished from the general issue.

If the plea tendering issue in this manner is made  
as an answer to part only of the declaration the residue  
must be answered in some other way. But where such  
a traverse really denies the cause of action, so that what  
remains does not amount to enough to maintain it there  
is no need of pleading it to part only, for it covers the  
whole. When however the defendant pleads to part only, he  
should make some different answer to the other part.  
Now suppose for example, in an action on contract, the  
defendant shows an engagement on the part of the plaintiff with a  
condition precedent to be performed by himself, and a non-  
performance. The defendant may traverse that the plaintiff has per-  
formed the condition precedent and may plead this  
as a plea to the whole declaration, for that performance  
being denied, there is no cause of action; he need not  
then give an answer to the residue. Now where a  
cause of action does remain.



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Plea and Pleadings

Such a special traverse then will in most cases have the same effect as the general issue, except in as much that the plff will not be required to prove the facts not traversed.

It unites the whole cause of action, though not all the allegations.

But a special plea alleging new matter which amounts to the general issue, is inadmissible. It is generally so because it unavoids the length, the expense and tends to refer questions of fact to the jury. From a traverse of a special part, only does not. Thus, if the an action of trespass the de<sup>f</sup> pleads an alibi, his plea is a bar, for it really amounts to the general issue and yet it furnishes new matter which the plff may answer. But nothing, or at least new matter the local sufficiency of which it is not for the Ct to determine, ought to be officially intended. In the example given it is impossible that the Ct should ever be called on to determine the local sufficiency of an alibi. The question of local sufficiency can arise about new matter of avoidance is allowed.

3 Bt 509

3 Bt 509  
The Court will  
Pleadings

In Tregbas v. Carr Common Pleas a special plea of the de<sup>f</sup> is held, at Common Law as it amounts to the general issue. It is allowed however, in County of Statute and at Com. Law by juris collation, therefore it amounts to the general issue.

But to the general Common Law rule that a special plea which amounts to the general issue, shall not be allowed

There are a pleading

There are two exceptions. 1<sup>st</sup> That a special plea is necessary. 2<sup>nd</sup> That a general issue, is good if it contains special matter. 5 Nov 202.  
1<sup>st</sup> Justification, for that presents a question of law and the rule of the Court must be laid on record. And 2<sup>nd</sup> Holt 272. 31

The Court may in its discretion allow such plea, where the matter pleaded is such as may create a scruple in the minds of the jurors, that is, the gentlemen of the profession. Co. El. 871.  
As in a plea of title in trespass where the general issue is pleaded, by giving colour, as to raise a question of law. 2 Mod. 186.  
274.

The pleading specially of what is not warranted by either of these exceptions is said to be good cause of special demurrer. 5 Nov 202.  
And yet it is admitted that the Court may in its discretion allow such pleading. 2 Mod. 186.

According to other authorities, it is no cause of demurrer, but of motion to the Court that the plea should enter the record. 5 Nov 202.  
general issue, or that the plea should enter a record. 2 Mod. 186.  
Both these rules I seem to be correct. And it has been decided in Constitution that this was the proper course. Holt 272.  
formerly the practice here was always to demur. 3. Day 481.

Now though these rules are apparently contradictory, yet properly applied I conceive that both are law. Such pleading is not originally, a cause of demurrer, but of motion to the Court, ut supra. How then may be a plea is said to be demurrable? I answer if the Court shall allow the plea, and the plea is refused to enter the general issue, and the plea is a demurrer judgment will go against him. But on such refusal, the plea may instead of demurring take judgment by record. In the first instance then it is



Mass. v. A. H. H. H. H.

2

125.

In the most recent case, it is not unusual  
to find a party making other defenses than those which  
arise from the fact of the plea. These defenses are  
in evidence, under the general issue. (See *Mass. v. A. H. H. H.*  
most of us almost always place the general issue) This must  
be the case in every case where the party is not  
satisfied by giving colour.

Giving colour.

By giving colour is meant the admission of some prin-  
ciple matter in the plea, in order to justify in answer <sup>3. 781. 309.</sup>  
to it, in plain view a little of his own, which he says is his. <sup>2. 62.</sup>  
In what he alleges in the plea, he always, even if he <sup>50.</sup>  
some selective little, unless when he says, the plea claims, <sup>3. 781. 309.</sup>  
whereas if he had pleased a little in himself only, this would  
have amounted to the general issue and presented no ques-  
tion of law to the Court.

But the plea in response to the party, a little more and  
give colour and to I suppose counts. The necessity of  
the plea giving colour is founded solidly in the rule that  
a special plea amounting to the general issue is bad. But <sup>both 2.</sup>  
there is no such thing as a general issue in the plea, and  
after the declaration. It is said in a case in Easton in <sup>Lawrence</sup>  
a note in the volume that the plea may give colour. The  
plea, for it will be neither a declaration nor a plea, and  
suppose a doubt whether it would not be in an objection  
nevertheless I think it would.

There is still another kind of plea which is a declaration  
the general issue in common law is a special plea



Had an a Pleasing

General Issue with an Spent.

Now an a plea stating special facts which go to prove the genuineness, and concluding with the general issue. Now this is not the common pen. issue, for it alleges special matter, nor is it a special plea amounting to the general issue because it concludes with the gen. issue, nor a special plea alleging new matter of assistance, for it does not conclude with a verification, but to the contrary. Thus in an action on a bond the defendant pleads that he delivered the instrument to A as an agent, to be delivered on certain conditions, to the party upon conditions the party never performed, and so, it is not in set and so. There is no necessity for pleaders in this manner, for the defendant have taken advantage of the non delivery under the plea of non est return.

So, also, to our action on bond, the defendant pleads that he delivered the instrument to A as an agent, to be delivered on certain conditions, to the party upon conditions the party never performed, and so, it is not in set and so. To too a plea could may set out her conditions and conclude with the general issue et supra. This is called pleading the general issue with an affirmation "and so." This plea ought to conclude "to country" in being a species of general issue. To are most of the authorities, but so coincident to some opinion, it may conclude with a verification. But as the other of them is wrong, must certainly be wrong. And if one could the latter involves a solemn, and if it concludes with a verification it would then be a solemn et supra.

2d Ed. 26, 164.

2d Ed. 276.

2d Ed. 926.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

2d Ed. 55.

Now read Hearings.

and read the general plea with the plea in it.

This plea is useful in pointing notice to the plea of the  
true defence, as it is in concluding the plea. <sup>187</sup> Gibb L.S. 164.  
For facts stated in it. For after making this plea the defendant  
is not allowed to show the instrument not to be his act  
and deed in any other way. There is one opinion in talks  
club which is opposed to this, (namely, that the plea may <sup>talk 275</sup>  
stand over and take exception to the specific matter) and  
for which I cannot account. Since there is some doubt  
in the books, in relation to the plea. But when  
it does come to the country, the plea certainly will  
not stand over.

Gilbert, in his law of Evidence, says this plea may be  
disputed to, and so I suppose it may, if it can. <sup>Gibb L.S. 164.</sup>  
It ends with a verification; but, if it concludes to the coun-  
try, it cannot, unless the facts stated do not support the  
General issue.

A plea which is stated in point of form  
was originally used by some thing extraneous, as <sup>5. 50. 119.</sup>  
a plea, or some so, in some kind of part facts, as by  
alliteration the defendant could not plead the general issue  
except with an assent. But the law is otherwise now. <sup>Gibb L.S. 163.  
164.</sup>

This mode of pleading the general issue, through the  
cases of probation on the plea and for the reason Lord  
Holt was called impotent. I never know how  
it can be called impotent, though it may not always  
be very wise. Now for the general issue.  
And to

What were pleadings?

Plea to the action of the second cty. & are Special  
pleas in bar.

4 Bro.  
Lawes. 7-8  
15129.

A special plea in bar is usually supposed to be one which  
admits the allegations stated and denies them. But this  
English doctrine, is not universally true; for a special  
plea in bar does sometimes traverse the declaration.

Wells. 24.  
2 You. 79.  
Esp. 31. 20. 418.  
Lawes. 116. 118.  
121. 148.

I shall not venture to give a definition of any word, for  
I know of no one whose words not require much qualifica-  
tion. This comes as near the true definition as any one  
precisely expressed can come. I would however observe

4 Bro. 273.  
Talk. 91.

that it does receive in admit all traversable matter,  
which it does not traverse and does in avoidance of what  
it does admit.

It is a rule in pleading that every special plea of jus-  
tification must confess the fact intended to be justified; for  
it would be incongruous to justify what is not confessed.  
Thus if in *Trespass for a battery*, the defendant pleads & avers  
in his defence, with an act which does not constitute  
a battery, the plea would be ill. As when in *Trespass for*  
*a battery* the defendant pleads that he was a warden of the  
Church, and that the fact were his fact in time of service,  
which the court took ill as he had a right to do, and aver-  
red that that was the battery sought to be justified, the plea was  
clearly bad (though supported on a point of the great mis-  
understanding of the 1<sup>st</sup> cty) for he ought to have avowed the battery  
instead of justifying what did not amount to a battery.

1 Sam. 28.  
28.  
2 P. R. 298.  
Talk. 394.  
Carth. 380.

I shall

Plea and Pleading

129

A plea in abatement does not however strictly ad-  
mit and avoid or deny, but shows that the plea is  
inadmissible, from wanting the facts alleged by him.  
It is a plea qui denegat.  
Lanc. 38, 40.  
130, 146.  
158, 161, 174  
Wills. 13.  
3 Bl. 308  
2 Sa. 434.

A pleading plea in bar always advances new special  
matter and is usually in the affirmative; though not al-  
ways as in the case of negative averments. Thus the new  
matter is not in the affirmative. — The defendant pleads that he  
has not done the acts imputed to him to be done.

It may be well here to explain what is meant by new  
special matter. These terms do not imply that the  
matter should be positive or affirmative, it may as  
in the latter may be negative. Every thing, however,  
except a denial of the allegations on the other side, is called  
new matter, in the law, as contradicted or denied from mat-  
ter of denial.

All new special plea in bar advances new matter  
It must conclude with a verification. For a case of this  
was already seen in Barra, for whenever new matter is  
alleged by one party, the other must have supplied the  
rule of answering it as he pleases, in either of the three  
ways before specified, namely by denying, by confessing  
and avowing them or by answering.

Lanc. 130.  
5 Bl. 309-31.  
Simp. 5, 75  
2 Bl. 772.  
3 Bl. 1725.  
Lanc. 159, 167.

There is an exception to this rule in bar, where in 5 Geo. II.  
under which the special plea of bank-ruptcy is allowed  
to conclude to the country. This is a perfect answer  
in the case of banking. This with the construction which the  
court has put upon the Statute is in conformity with the

5 Geo. II.  
Lanc. 17, 18.  
229, 237.



Law 40  
M.D. 5.

But these words in the negative must not be understood as  
 "that a negative is not a proof is to be proved, and there-  
 fore, the defendant may proceed without a verification."  
 In the other hand, places which form a complete and proper

Reg. 98.  
L.D. 58.  
37 L.D. 399.

you must conclude to the contrary. For if one party is to  
 conclude such plea with a verification, the other might affirm  
 over his part, and thus they could not necessarily ever be  
 brought to an issue. When an issue is formed thereon either  
 is ripe for a conclusion, it must be to the contrary.

When the defendant alleges distinct matters, to different parts of  
 the declaration, he may conclude each with a verification, or  
 the whole with one verification. Thus if it be an action of

Laund. 338-9.  
Fairbairn. 12.  
299.  
Lenth. 43.

damages, for a trespass against the defendant, please, defendant  
 as to 50s. and a special defence to the rest, he may con-  
 clude each branch of his defence, or conclude the whole with  
 "one verification."

Reg. 33. 332.  
4 Geo. 23.

I'll please a court of course what they do not deny. These  
 and others is no plea to debt on cause because they are not  
 in the execution is admitted, and no special matter  
 alleges in avoidance.

Col. 285.  
383.

With regard to the structure of a plea in bar, Mr. Coke has  
 laid down a very general rule "that the defendant must present  
 such plea as is pertinent, and broken according to the qual-  
 ity of his case, state, and interest." This rule is undoubtedly true,  
 but there is nothing sufficiently dis-eliminative in it to be  
 given to the student. There are however certain rules, more  
 particular which it is important to understand.

Massachusetts

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Every special plea in bar must contain the whole matter;  
otherwise it is not good. The reason is, that if there is a thing  
guarable it cannot be tried. Thus a plea in the debt to the  
tion on a contract that he has always been ready to pay, <sup>2 Phill. 74</sup>  
without admission tender, would be ill for the secret intent.  
Even if the party could not be tried, and even if the court  
the issue would be in judgment.

Every plea in a civil suit must contain the whole matter, but  
they cannot be separated in it. Where matter of fact and  
matter of law are involved, they must be or remaine just a  
matter of law until it is married to and the matter of fact  
traversed. Thus a plea by the defendant that he is indebted to the  
plaintiff for a debt, and that he is a trustee, and accordingly that the  
debt is payable to him, and the description would be in several parts;  
he the more cannot sever the plea of law, whether the <sup>3 Phill. 138</sup>  
debt is fully enjoyed, or the event the question of fact whether  
he entered a bill and yet the two are inseparable that the  
cannot be separated. The plea of trust of law is much more  
the special matter, in which he traverses a claim in law, and  
plea and then aver that under this claim he is entitled  
- so that in a traverse or traverse the question of law or  
fact, can only be referred to their proper branch.

A plea in bar to the whole consequence must answer  
the whole grounds, or cause of action, otherwise it is ill. <sup>Ex. 200.</sup>  
The whole, or other words, shall be aver bar? <sup>3 Phill. 375</sup>  
And it is an action for a rent and a butler, and messengers,  
the defendant the rent and butler, and messengers, <sup>1 Phill. 24</sup>  
the defendant the rent and butler, and messengers, <sup>2 Phill. 327-3</sup>  
the defendant the rent and butler, and messengers, <sup>3 Phill. 171</sup>

# Two new Pleas

Ex. 51a. 28K  
 Anticipation, nothing  
 last page.

or the whole case of course, as in the previous, the law  
 is not clear, as well for the plaintiff as for the  
 defendant.

L.R. 40  
 1881. 28. m. 2.  
 337.  
 2. 28. m. 1. 27.

The same rule holds as to all the subsequent pleas. The  
 plea makes an entire answer to the whole plea in law which  
 amounts to an answer to part only, his replication is in toto.

A defendant may always make different pleas, to dif-  
 ferent parts of the declaration, whether it is contained in two  
 counts or in one only. As in the example before given of example  
 1st for 1008 the 1st plea, payment to part and  
 another defence to the residue.

This general rule leads to some conclusions to which it  
 is now necessary to attend.

If matter pleaded as an answer to the whole declaration,  
 or an answer to part only, it is bad for the whole, unless  
 it also is matter which would be an answer sufficient  
 for the whole, is pleaded to part only it is ill. Suppose  
 for instance, the converse of the last example, to an ac-  
 tion of a pump, 1008 for 1008 the 1st pleases that as to 1008  
 the 1st ought to be barred to sure to sure that no  
 matter left payment of the debt 1008.

Ex. 51a. 28K  
 337.  
 1881. 28.

7. 28. 28.  
 337. 28.  
 2. 28. 28.  
 337. 28.

more than one plea is allowed to the whole, as  
 long as it is to part only. It is bad for the whole  
 if it is to part only, as to the residue, and if it is to  
 be taken into account, it is to be taken into account  
 from the beginning, but it is to be taken into account  
 But as to the mode of pleading, it is to be taken into account

There are 2 questions  
in relation to the answer to the whole or to the whole  
however many a separate one or even, old, from a rule.

If the plea be an answer to the whole or to the whole  
part only the plea should take account of  
part of the demand. For the plea is insufficient on the  
whole, and if it be a plea to part, it is an answer to part  
and in such case, an answer to part only is not a  
plea to the whole. In this case the plea is an answer to part  
for it is not an answer to the whole, but it is an answer to part  
and is sufficient to be maintained.

1. Lunt 28 m. 3.  
2. Lunt 179.  
3. Lunt 231, 241.  
4. Lunt 312.  
5. Lunt 312.

But the rule to be the same, though the matter is  
different in fact, as a plea to the whole or to the whole  
is not a plea to part, and so are the authorities, because.

1. Lunt 52.  
2. Lunt 312.  
3. Lunt 231.  
4. Lunt 312.

There are two cases, however, it would seem that the plea is  
more, but this is not the point in question.

Lawyer has shown the rule now in force. But it is  
to explain the reason of the rule. If the plea is an  
answer to the whole, it is an answer to the whole, and  
answer, only, in part, it has been observed that the plea  
is insufficient. For the plea is not an answer to the whole  
and is insufficient to sustain the plea, and so it is.

But when the plea is an answer to part only, and  
is in fact an answer to part, or to the whole, the plea is  
not sufficient. Because in the latter case the plea is not  
an answer, he has made an answer to the part only  
of the declaration, and the plea is not sufficient to sustain the  
plea, and is insufficient. He has made an answer to the part only  
of the declaration, and the plea is not sufficient to sustain the  
plea, and is insufficient.







For the rules respecting the manner of settling both  
a special defense I refer you to the action of Freeman  
taken where all the distinctions were fully and ac-  
curately considered.

Pl. 400.

W. L. 100.

Planch. 298.

A Sept. man would allege we had less more than about  
seventy, prima facie to a sufficient answer to the  
declaration. Clearly he was not negating the possible  
summers which the billman give.

Feb. 20. 3.

2. Sept. 333.

339.

Repugnance in a material point invalidates the plea, but  
repugnance in an immaterial point is merely surplusage.

3.9. 145.  
159. 51.

159. 56.

in the form of a *Staphylinus* *Staphylinus* 188. 143. 150. 161

Leaf 56

22

Lawes 189.  
Lawes 189.

1847 185.  
 1851 185.

Pharisee has regularly begun with "a sheween man"  
that the people should not have his action. But the man  
commenced with suwari and when the plea arose that  
the man was a cause of action. The action, now, denies  
the present cause of action. The man is now debat, that  
the man was one.

26. 743

2

Lucet. 187

1900

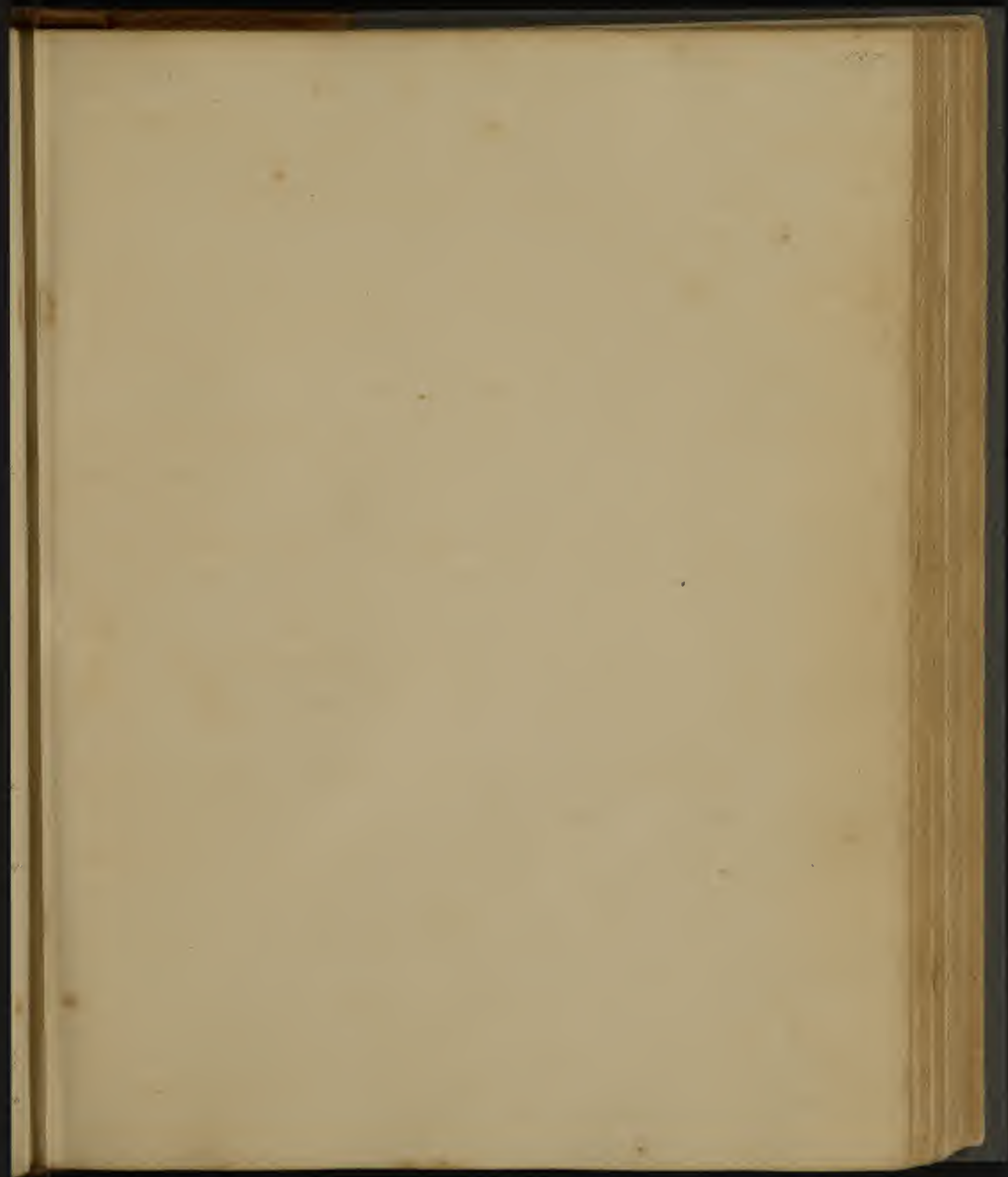
a. Linn. 11. 17.

2. 24 817

Nov. 25. 2

A Trauma can properly be taken such as a wound which is material. But a material wound is not a cause that is receiving the cause of action. It's trauma would properly be taken as an immaterial wound the repair and the fineness of the tissue would also be immaterial.

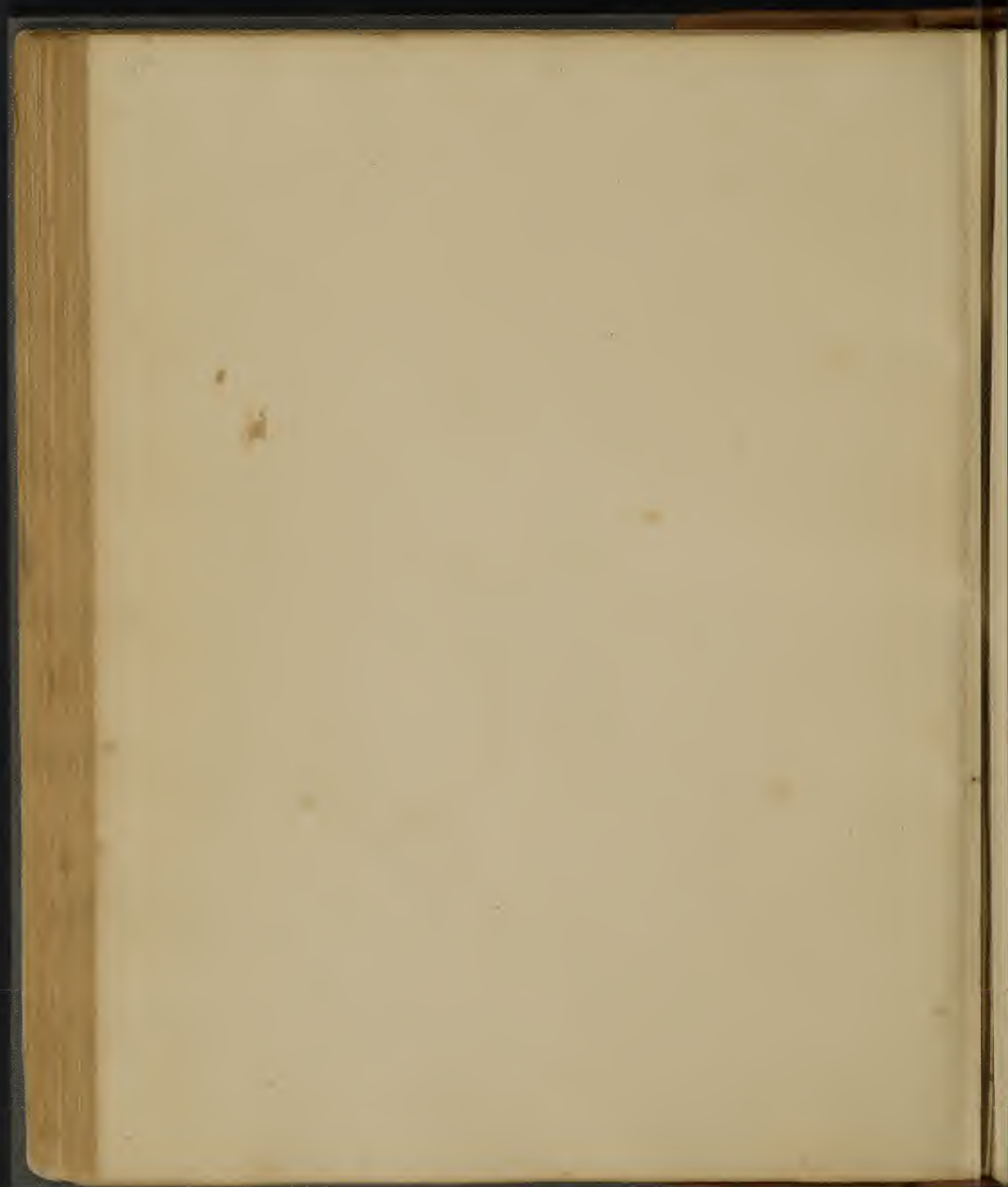
195.

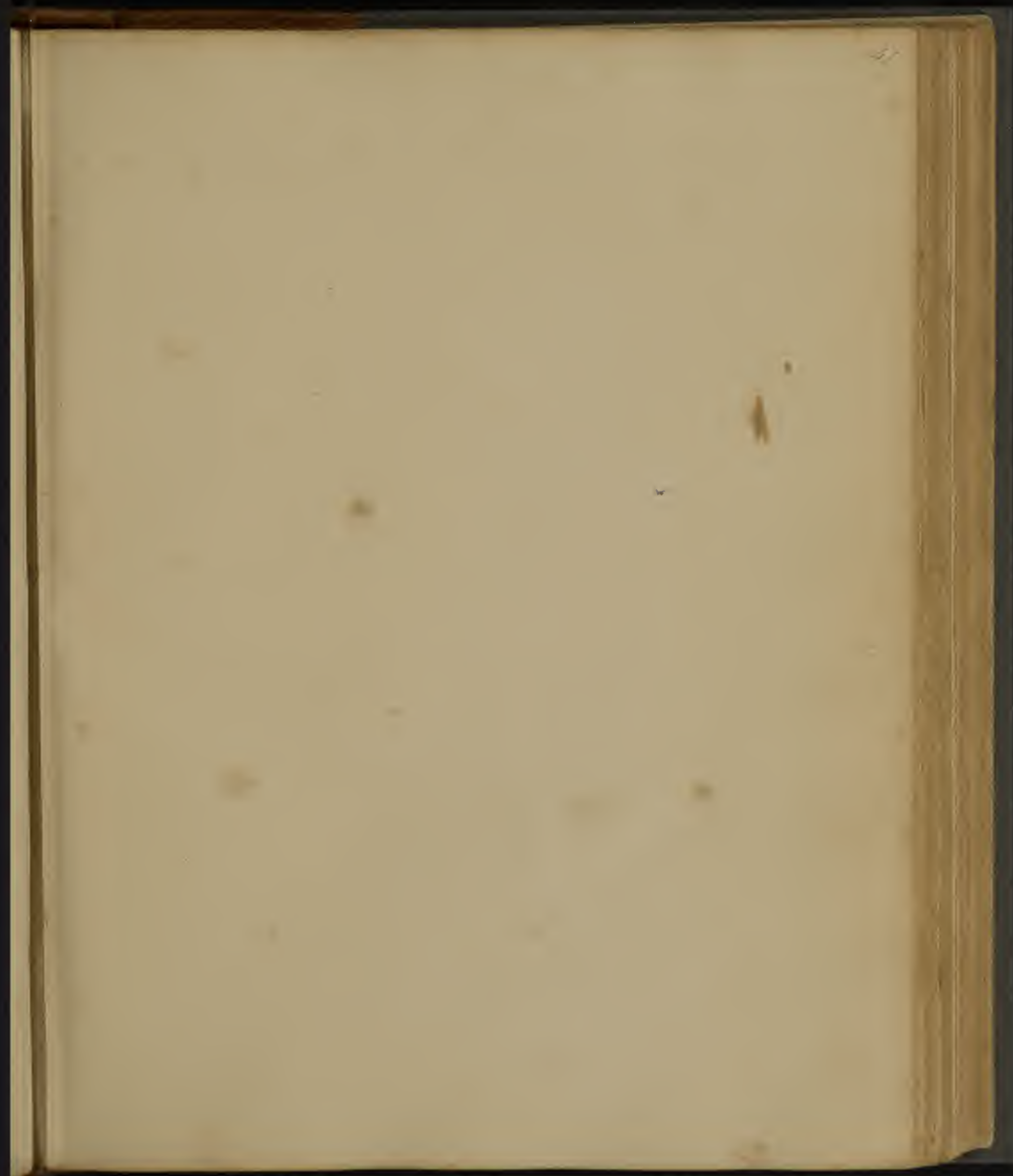


















The first of these is the  
 fact that the system of  
 the world is not a  
 simple one. It is a  
 complex one, and it  
 is one that is  
 constantly changing.  
 The second is the  
 fact that the system  
 of the world is not  
 a static one. It is  
 a dynamic one, and  
 it is one that is  
 constantly evolving.  
 The third is the  
 fact that the system  
 of the world is not  
 a uniform one. It  
 is a varied one, and  
 it is one that is  
 constantly developing.  
 The fourth is the  
 fact that the system  
 of the world is not  
 a perfect one. It  
 is an imperfect one,  
 and it is one that  
 is constantly improving.  
 The fifth is the  
 fact that the system  
 of the world is not  
 a complete one. It  
 is an incomplete one,  
 and it is one that  
 is constantly expanding.  
 The sixth is the  
 fact that the system  
 of the world is not  
 a final one. It is  
 a provisional one,  
 and it is one that  
 is constantly being  
 revised.

A Traverse, in the language of pleading, is a denial of some particular point of fact alleged in the <sup>pleading</sup> <sup>in Mass. 57</sup> pleading; and always touches an issue. It may be taken to any part of the pleading, — to the plea in bar, replication, or even, as well as to the declaration.

When a traverse is presented by special matter of inducement, Mr. Lewis calls it a special traverse. But I think he is clearly mistaken, he has not in construction any step of traverse thus presented, which even according to him are not special.

Does it then follow that the extent of a traverse decides its character, of general or special, and that only? If traverse touches all that is alleged it is a general traverse, as in issue denying the whole declaration is the general issue. If however it denies a part only, it is a special traverse.

It is frequently said that a traverse closes the issue. This is most unquestionably incorrect. The general rule is the reverse of this. A technical traverse is always taken with an abrogation and a regularly concluded with a verification. It is impossible then, that it should close the issue. This is the truth, — a traverse regularly touches an issue, and this is more sufficient than common. For example, one party pleads that from whom he received title, was seized in fee, the other replies that he did receive it, but abrogates this, "without this that he did receive in fee, and this he avers to be void."

4 Mo. 57  
8 Mo. 27  
Mo. 87  
17 Mo. 321  
Lewis 121



## What and Whence?

To close this issue, the defendant must then affirm over his allegations, and conclude to the country.

Lawes. 119.  
1 Taun. 22.

The words "abque hoc" "without this," are in pleading the technical words of denial, and are therefore, in the last example, equivalent to saying: "I do not say seized in fee." These words are not indispensable; et non will answer the same purpose.

A general traverse, however, which includes the whole of the allegations, of the other party, concludes in general to the country. And the general traverse abque talibus

1 Taun. 133.  
note 3.

Talk 4.

1 Br. & P. 76.

2 F.R. 439.

8 Co. 66.

2 N.R. 364.

is a general traverse. But it is an evasion. It is like saying: "the defendant pleads matter of fact by way of justification or excuse." The traverse abque talibus, without any such ground of defence, includes the whole cause of action and concludes to the country.

Why, it may be asked, should a general traverse conclude to the country, any more than a special one? I answer, in special traverses, it must be necessary for the other party to make a special answer. It must be taken on an immaterial point, or furnish an answer only to part of the declaration, or plea, and so be answerable. But from the nature of a general traverse, which denies the whole of the allegations on the other side, this necessity can never happen there. Because it can never be immaterial, for if the whole of the allegations traversed are immaterial, the traverse is not in fault for it. It is tendered unripe, which cannot be objected to. It cannot therefore be objected for the other party to answer by alio modo.

What are the Principles?

It seems to be established, that in many cases a general traverse may conclude with a verification as to the country. These are the words of Judge Buller.

Now it is true that there are precedents both where

That it is proper to conclude to the country is not doubt-

ed at all. This is clearly settled on principle, for after a

general traverse, a cause is always ripe for trial. But

there are cases, in which it has been allowed the party to conclude either with a verification or to the country.

It is undoubtedly too late now to establish the propriety of this rule, since that eminent judge had decided his-  
The Sir Francis Buller has decided it to be so. But it

is certainly very indefinite. The amount of it is this

that there are certain cases in which this conclusion has been supported. In such cases, therefore it may prove an

aid, in future. But besides, the inconsistency of the rule is obvious to me to be manifestly a violation

of all principle. It is not all comprehensive, how it can

coincide with a general traverse to conclude with a verification.

All the objections are obvious. How then can

any new thing be introduced? or how can the opposite principle

be shown without destroying this one case. The conclusion

should clearly lie to the country.

The second traverse is in a case proper to conclude to the country.

It is in a case proper to conclude to the country.

It is in a case proper to conclude to the country.

It is in a case proper to conclude to the country.

18  
Matters of Record

concerns a mere matter of fact and not matter of law, right, title or interest. If it does concern right, title or interest, such traverse is then improper. The reason why it is not proper in these cases is that it is wholly inappropriate to the trial or decision of such things.

But although this general traverse, abque tali causa, concludes to the country is not the proper plea in these cases, yet even here the pleader may reply de injuria sua propria, and conclude with a special traverse of any particular fact or point in the opposite pleading he is self, for he thus avoids the inappropriateness of the general traverse abque tali causa, and by the special traverse, leaves the matter of law divisible from the matter of fact. Suppose in Prosser the jury justified the act, and among other things, please the record of justice. The object of the plea is to deny this justification; but he cannot conclude with the abque tali causa, for then this record which is matter of law would be sent to the jury for trial. But he may plead de injuria sua propria, and take a special traverse of the record, by denying it, and then the issue is properly taken for the Court to decide. But in the other case, both law and fact would be blended in the issue to the jury. This is a very common reply to matters of justification pleaded to torts.

The general traverse, de injuria sua propria, abque tali causa, may be replied in its several forms to a plea alleging matter of record, right, title, or interest in other things.



Plaintiff's Plea

matter is alleged by way of inducement, see *Ther. v. Carr*, 11 Q.B. 224  
is not favorable, and the general traverse does not make it parol to the issue.  
*Law. 138, 83, 910, 320.*

I should observe which it has been observed is always preceded by matter of inducement begins with an averment and differs from denial by a common negative, not only in action but generally in the conclusion. *Law. 117, 145, 149.*  
tion. It regularly concludes with a verification, but a positive denial (supra) always concludes to the contrary.

The latter mode, that is a direct and positive denial by a common negative to the proper one where the party taking the issue in traverse no new matter. This is a mode of traverse or denial which has not heretofore been noticed. In this case there is no need of the technical term — the common traverse or a negative is sufficient. Suppose the case in an action on a contract passed among the jury may reply, first by a technical traverse, "That the contract was upon good and a lawful consideration, *Law. 200, 207, 212.*" without this that it was corruptly a good one, or on the other hand admitting the inducement that it was an *Law. 138 and 139.* upon a good and lawful consideration he may say *Altho 87, Law. 110, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.*  
"it was not corruptly a good one and a conclusion to the contrary. This is described to be a direct and positive denial by a common negative.

There has been a great deal of controversy in the books whether a word conclusion of "verification" or "to the contrary" is matter of form, or of substance. But it is now settled.



*Massachusetts*

Wentworth's  
1775

cellous, since the Stat. 85. does not allow the grant. But  
note of Rights. That it is more matter of form, and that  
some tape can only be taken, if by special allowance.  
But before the House I take the better opinion to sense  
that it was matter of substance and ill, on general  
disobedience.

Hard 94.

Edw. 1775. 164.

Verth 243.

1775. 178. 3.

2. 1775. 178. 3.

In fact we have no such Statute, but I suppose from  
the liberality of our Judges that they would allow the  
renewal of the English law.

Where an allegation on one side is directly denied by  
a common negative on the other, it is wholly needless, and  
therefore improper to supersede a judicial traverse. For  
if that were allowed, the parties might answer over, and  
in finitum, and would not be bound by the rule of plea-  
ding to come to an issue. The 1st. example above per-  
tains to the 1st. instance of a resolution, proceeding the contrary, he has  
not performed it -- now the Superaddition, or a subsequent  
that he did perform would be improper, for then, as  
a complete issue in the first instance. It would be con-  
trivable.

This mode of traverse has a common negative more  
simple and convenient and much less entangled  
than a special traverse, and it brings on a more  
speedy issue because it always concerns the coun-  
try.

In the conclusion of plea, account is taken  
in the same sense as confession. If the plaintiff  
it must be said to be taken for the defendant, "and the plaintiff is  
admitted."



Also see, *Edwards*

some for the nature. First, he must show he has met  
the *Specialty*, to make out his own case of action, for with  
out either of both the above it does not appear that he  
has one: And having set forth the new matter above, & that  
he is one of action, he must leave it open for the jury to  
decide as they please. It is more necessary to the jury, in  
oral trials, & more necessary because there the jury is  
supposed to be wise for trial. But there is another for-  
mal reason for the exception, which is, that a traverse  
with an ad-gue 300 can only be taken in an affirmative  
allegation.

*Com. Pleas.*  
§. 20. 3. M. 16  
Laws, 110.  
Hobd. 321.

It has been said both by *Bovius* and *Laws* that a  
Special traverse must have a proper inducement, as it must  
be a negative proposition. If all the *inducement* new evidence  
with there is no *inducement* has created so much perplexity  
in my mind as this. Both these authors cite *Edwards* 321.

But this rule is by no means an universal one. There  
are certain cases indeed, where a *traverse* without an  
inducement is more proper by an inducement.  
The rule in my apprehension seems at the cross end, and  
is very apt to mislead. I therefore I will prefer an induc-  
ment of course, to *Laws* an inducement or not, cannot  
be made the criterion to determine whether it is or is not  
proper. Though an inducement may prevent what  
would otherwise be so. For question is not what I have an  
inducement to prevent a negative proposition, because a  
traverse may always create one? But will the *inducement*  
inducement *be* on a negative proposition?

Plea and Pleading

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For example, to an action of assault and Battery the defendant pleads molte maner impound. Now in this case it certainly will not answer to the plea to traverse the plea without an inducement. For here it would be anipative pro nant, since a denial that the defendant "put his hands" on the plaintiff, would seem to imply an admission, that he did not touch him at all. In the case therefore, the proper replication would be, that the defendant committed an outrageous battery, absque hoc, quia molte maner impound. This excludes the inference, that he committed no battery at all. In an action of Contract, the defendant pleads an unlawful agreement to pay 10 pence. The plaintiff replies that there was not a corrupt and unlawful agreement to pay 10 pence. This leaves the implication that there was an agreement to pay 9 or some other sum above the legal rate, not in, the inference of a proper inducement. This implication is excluded, as "that the contract was made upon a good and lawful consideration" without this that it was a reasonable agreement.

But there are many cases, wherein, where a traverse without an inducement does not form a negative pro nant, as in the plaintiff's example above, where when one defendant pleads that he did not do so and the plaintiff says he is not clear. For such is no negative pro nant. But so it is a traverse and other cases, which may be mentioned.

Now this subject is not so much as it seems, for it is a very difficult one, and it is not so much as it seems, for it is a very difficult one, and it is not so much as it seems, for it is a very difficult one.



The rule laid down by Gompers as a never-failing one, is not only when the issue is itself in such circumstances or particulars not material. It is well known more a negative proposition without an inducement I be entitled to it and it releases a justification is excuse on a particular case; the law requires that he is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in inducement is open that he acts on an other way. For the reason is that he acts on an other way, the inducement is not entitled him to excuse on that case the in

It is true that he saw only some of the faults of molli-  
tude improved man is considered as an exception to this rule  
a matter of indifference is then necessary though the teacher  
reaches only material allegations. But the rule is a con-  
stant one.

Where a party is only a confederate, and decides by mere malice & his own, a traverse is unnecessary and improper, for since he confesses and admits what he alleges is not inconsistent with the allegations of the other party. And on the other hand a traverse would be inconsistent with his own own matter. For example the defendant pleads a release the plaintiff alleges that the release was obtained by fraud, now he cannot not traverse a traverse of the release in the return, for fraud is not inconsistent with its existence, but the denial would be inconsistent with his plea.

Plaintiff and Defendant

Since in such cases when the party concludes in a dispute  
he must conclude with a confession, or that the matter  
matters in the law were from the other side.

27th 1877  
17th 1878  
Laws 118  
Laws 127  
Laws 137  
Laws 147

But if the party in such case concludes with a confession  
it is only on special occasion.

Laws 21  
Laws 187  
Laws 181

A traverse proceeds by an inducement, and which  
as to the same point with the inducement is both a  
conclusion of fact from the inducement. What is meant  
by the same point, will be explained hereafter.

This will be evident from consideration of the following  
of a technical traverse. For example — the defendant pleads  
that John seized in fee, the plaintiff replies that he did  
seize in fee, aliquo loco, that he did seize in fee, or  
in other words, "and therefore he did not die seized  
in fee," and so in the same manner which has been seen,  
the traverse will be seen to be only a conclusion of fact  
from the premises.

When a technical traverse with a confession is tendered  
the issue is formed by the office is formed by the  
opposite parties affirming over what is traversed and laws 4.  
conceding to the country, thus the defendant pleads that John  
seized in fee, the plaintiff replies that he did seize in  
fee, aliquo loco, the defendant replies that he did seize in  
fee, or in other words in fact he has allowed and so forth  
to put him off on the country.

It is a rule laid down in the books that an issue  
formed on an aliquo loco should be taken in person.

Laws 21  
Laws 181

## Mutual Exclusion

affirmative after it. The meaning of the rule is that  
a negative cannot be traversed with an abque hoc.  
For if that which is so traversed is a negative then  
when the other comes to affirm over what is traversed  
it will still be a negative, and then the abque hoc  
will be followed by a negative. A negative must

Col. 12, 13 to be traversed by an affirmative and not by an abque  
Laws, 126. hoc, which is itself a negative. Now suppose a neg-  
ative is traversed by an abque hoc the traverse consists  
of a double negative. The defence pleads that L. is  
not living; the p. t. replies abque hoc that he is not living;  
This is the same as to say "he is not negative, which  
would amount to an affirmative "that he is alive."  
It seems to be regularly a defect in point of form only.

The opinion of a traverse when required by the rules  
of pleading was formerly held to be matter of substance,  
4 R. 5, June 16. though as to this, all the opinions did not coincide.  
But since the Statute 4 and 5, Anne c. 16. it is considered  
4 R. 5, June 16. as mere matter of form, and advantage must be taken of  
1. L. 100, 43-4. it by special averment. Such a fault is raised in gen-  
1. Sum. 11, 12. eral averment, and by verdict or by a demurrer.  
133. 11.

It is a general rule that there cannot be a traverse  
Col. 2, 282. upon a traverse. By this it is meant that when  
R. 14, 114. one party has traversed a material traverse, the other  
R. 79. party cannot traverse another traverse up-  
Gen. 17. on the inducement, to the same point, that is, the same  
specific ground of claim or defence. It must be

## Head and Headings

except and join in, the material traverse or traverses.

For example, the 1st pleader that S. was seized in tail,

Chitty, Pl. 1947.  
Comm. 14, 17.

the 2nd replies, 'he was seized in tail without this that he was

Yough. 62.

1877, 11, 27, 412.

seized in fee. Now the rule is that the 2nd cannot waive

1878, 439.

Confessing, Pl. 1947.  
Comm. 14, 17.

1878, 439.

his traverse and traverse that he was seized in tail, for this

24, 76, 182.

would be a separation from, and disclaimer of, his pretrial

location and the parties are not to go on an indefinite

For the object of pleading is to bring the matter in liti

gation, as especially as possible to one point, in which the

case may be fairly tried.

But on the other hand a traverse after a traverse is good,

even though the first traverse is material. For a traverse

after a traverse, is meant one which does not go to

the same point, that is, the same specific ground of

claim or defence, with the former traverse. For exam

ple, the 1st in an action of trespass, pleases a licence, on

a particular day, ad que hoc, that he was guilty, before

or after that day. Now if the trespass was actually com

mitted before or after that day, the 2nd will of course join

in the traverse. But in this case, he may, if he pleased,

leave the traverse, and take issue upon the materiality

of the licence. For if the 2nd was bound to take issue up

on the traverse, he would be completely entrapped.

Here the instrument to the first traverse does not go to

the same point and of course the traverse on the in

strument does not go to the same point with the

first traverse. The first traverse embraces only the

particular



Plaid and Pleading

trespasses committed before or after the day of the intended license, and not trespasses committed on that day.

Robt. 104.

Now the plea's right is absolutely material. For otherwise the defendant must plead a false justification as to a particular day, and traverse the time before, and after, when he was not existing; and thus the plea would be prosecuted from taking issue on the time when he actually was guilty, and of course, be inevitably defeated.

This distinction I shall endeavour more particularly to explain. Its importance demands that it should be thoroughly understood; for there is hardly a train of special pleading, or even a case as far as a rejoinder, without furnishing occasion for its application. Yet it is one which has generally been very embarrassing to students and not unfrequently to gentlemen of the profession.

But the rule is certainly founded on a sound principle and is as deep rooted as any in the law of Pleading.

It may be well illustrated, with some explanation, from the argument of Lord Hobart.

Robt. 104.

20. 24. 2.

17. 24. 6.

2. 43. 9.

Lord Hobart begins with saying, "where this rule (which has before been given)" that rejoinder, whenever a traverse is to

"be apt, and material to the plea's title, the plea is bound to it, and cannot for the same thing leave it; and he is bound to accept another traverse tendered to him, and there is no case in the law against this rule, as it is said."

1. As to an action of Trespass, per clause, per <sup>it is a well known</sup> the defendant

Please and Pleasings

a release of all action on the first day of January that is not a sufficient answer for the plaintiff to prove it to have been committed on a subsequent day, therefore the deft must also traverse, & show how that he has been guilty since. Now the rule is, that the plff may join in the traverse and affirmance that "he has been guilty since the 1<sup>st</sup> day of Jan<sup>y</sup>" as he will of course do, if the trespass was in fact committed after that time: or, he may traverse the inducement viz the release which would be necessary if the act was done before the 1<sup>st</sup> day of Jan<sup>y</sup>. or if he is bound to join on the traverse offered him by the deft namely "that he was not guilty after the first day of January," when the trespass was actually committed before he must inevitably fail though he has a good cause of action. This is a traverse after a traverse, though not a traverse upon a traverse, for the ind<sup>t</sup> denies, merely in paper committed after the first day of Jan<sup>y</sup>: but the second put in issue all before that time.

2. Again if instead of a release the deft pleads a joinder on the first day of Jan<sup>y</sup> he must traverse all trespasses before that time, & a joinder will include all acts committed since. Now if the wrong was actually committed before the first of January, the plff will join in the traverse. But if it was not, and yet no joinder was ever made he must have a right to traverse the joinder, as in the last case.

3. But if the deft pleads a release for one day viz the 1<sup>st</sup> Jan<sup>y</sup>.

Mad and Madmen.

he must traverse all trespasses before and after that day, for his justification covers only one case. Now if the trespass was actually committed on that day, and no licence was ever given, the p<sup>l</sup>ff must have an opportunity to traverse the licence or he will be satisfied of his action by a trick in pleading. To this I have  
See  
Robert. 104. use goes to disprove from the first, it is not, as was before remarked a traverse on a traverse, but a traverse after a traverse. I do not know whether I have made this intelligible, but it is certainly, capable of being so. and so.

The more simple, and a better way, however, for the def<sup>t</sup> to plead, when he has a justification as to part, and denies the rest, is to plead specially, as to the part only which is justified, and the general issue to the rest. But as this depends on the will of the def<sup>t</sup>, if he does plead specially to all, the p<sup>l</sup>ff must follow him. Thus if the def<sup>t</sup> would avail himself of a licence for one day, the better way would be to plead that as a justification for trespass, committed on the day which it covers; — and as to any trespasses before, or after, that he is "not guilty." But if he does not choose to plead in this manner, the p<sup>l</sup>ff must understand the rules which have been given, or he will be in danger of losing his action.

But to the rule that there cannot be a traverse, on a traverse, there are two exceptions.

5. When



Mead and Teller v. Mead

1<sup>st</sup> When the first traverse is taken on an immaterial point the opposite party may treat it as a nullity and traverse himself, the indictment. This does not come strictly within Lord Hobart's description, for when he speaks of a traverse upon a traverse, he takes it for granted that the first is on an immaterial point. In this case, however, the p<sup>l</sup>ff is not bound to take any traverse at all, for he may demure.

2<sup>d</sup> The second exception to the general rule is, when in an action of trespass in the County of G. the d<sup>l</sup>ft pleads a local justification (as that he was Sheriff &c.) in the County of H. abque hoc, that he was guilty of any trespass in the County of G. the p<sup>l</sup>ff may leave this traverse, and traverse the indictment, that is the local justification, in another County. Now this allows to discover & so to assign pleas which are false, and which tend to shut the Court of their jurisdiction in Transitory actions. In this case the action being transitory, the p<sup>l</sup>ff has a right to lay it where he pleases; and if the trespass was actually committed in the County where laid, he may join in the d<sup>l</sup>ft's traverse, or if otherwise may traverse the special justification, for the place laid in the declaration being immaterial, the p<sup>l</sup>ff is not bound by it, and if he could not do this he must inevitably be defeated, though the justification was false.

When the matter alleged in the declaration is the cause of action is in its nature divisible, so that the p<sup>l</sup>ff is entitled to recover for as much as he can prove the defendant.

Roll. 104.

Saith. 116.

6. Co. 24.

4. S. R. 440.

1. R. 781. 376.

406.

1. Saund. 22.

1. Saund. 21.

Co. 82. 99.

418.

Co. 6. 105.

Phil. R. 578.



Pled and Pleasings

cannot make ~~that~~ part of the plea which is an answer to a part only of the cause of action. an inducement to a traverse of the residue. For example, in a sumpter for 100g in which the deft may recover for any sum proved, the deft pleads payment for 50g aboue hoc that leaves any more. This will not answer, for if so, the deft would be bound into difficulty. For suppose the fact to be that only 50g were owing; now if the deft was bound to join in the traverse and affirm that the debt was owe more than 50g, the issue must be for and against him. The defense should plead in such case, as to all but 50g non sumpter, and to the residue payment.

Feb. 125.  
Com. Pleas  
G. 20.  
1 Laund. 267.  
289.

Again, suppose A brings an action against B for obstructing three of his carts, the deft pleads a justification as to two, aboue hoc, that he has obstructed three. Now suppose there were but two actually obstructed, and that the deft has no justification at all. If the deft must join in the traverse, he cannot recover even though for a part he has a good cause of action. The deft's plea is bad, he should have pleaded not guilty to one, and his justification to the other.

The party to whom a traverse is tendered, does not by joining admit the new matter alleged in the inducement to be true. Because in general, a party is obliged to join in a traverse when well tendered, and it would be hard to impute any compromise from a joinder to which he was compelled.

Success

Plas and Pleasings

Success when the inducement and traverse are properly adapted to each other the joining in the traverse regularly implies a negation of the inducement. For the traverse is but a conclusion from the matter of inducement; and therefore a denial of the traverse must operate as a denial of the inducement. This is always the case when the traverse and the inducement go to the same point. For example, one pleads that I have seized in fee; and the other, that he seized in fee without him that he seized in fee; it is clear that if I succeed by the first, in the traverse, cannot in this case be an admission of the inducement.

But even if the inducement is impotent, it is not admitted as a traverse for it would be hard to put the construction upon an act to which the party is compelled by law.

The party pleading a traverse, however, a denial of traverse, <sup>4 Inst. 2</sup> shall be allowed to say, for he is at liberty to deny what <sup>73</sup> he pleads. <sup>1. Wils. 338</sup>

But either party may answer and a demurrer, so far as they regard another suit, by Prohibition.

The sole object of this is to avoid the assumption of facts. Com. Pleas. <sup>73</sup> allegations are not received in the pleadings. <sup>Leves. 155</sup> <sup>2. R. 941.</sup> The purpose is the same in which it is used, for it cannot be put in issue, and is in substance no part of the pleading. This is manifest from the form. And the jury, notwithstanding, for the replies and answers.

The principles

## Wells and Wharrior.

2 D. 311.  
Co. Ld. 126.

The precise effect of a protestation, then, is to prevent the record from being evidence against the person protesting in any other cause between the same parties, on the same facts. Hence it is called in the *Edw. 1* and *Coke*, "the exclusion of a conclusion."

Lanc. 141.  
Dor. 276.  
Com. Pleas. 24.

And a protestation is the only mode of denying those allegations which cannot be put in issue. It requires no answer

Lanc. 143.

for it cannot affect the judgment in the principal case.

It is

on the same reason repugnant to the protestation does not vitiate the protestation.

But matters which might be excused by a protestation, will be conclusive evidence against the party. They are not protested against, in a future action in which the same facts are in controversy, which may occur the issue is found in the principal case.

Little, p. 192.  
Lanc. 141.

It has been said

A traverser can be taken from upon a table with  
him. Matter at bar, however material, cannot be trav-  
ersed. For the object of a traverser is the denial of a mat-  
ter of fact. Thus the words, passed or been heard, in the 22d  
a plea of justification, cannot be traversed, in the 22d  
the question is material and will not be traversed. In  
a matter of law, however, it is not the proper  
subject of a plea to the issue.

Thus upon the same scientific matter of crossing  
evidence cannot regularly be traversed. For see  
that the inducement to a traverser, however true, in  
certain cases be traversed as has been seen, in  
the 23d 208.  
The plea is a general rule for the inducement, in  
which is not a traverse.

To also in general, a "perjury" or a "false oath," is a  
plea of justification, cannot be traversed. Thus where  
in false imprisonment, the writ lies in justification,  
a writ directed to him, as Sheriff, for good or evil, in  
the 11th Co. 10.  
to cause, he looks to the jury cannot traverse that he  
acted by virtue or authority of the writ, or that is  
not sufficient. He may deny if he claims, the exis-  
tence of such writ, or that it was ever directed to the  
agent. But whether it was of sufficient virtue or au-  
thority to warrant the act, is matter of law, and there-  
fore not traversable.

It is even suggested that a plea to a writ of habeas corpus  
is, it cannot be traversed, or multiplied.



Pleading Pleading

Bar. 320. In a simple plea as meant a simple, one and the same  
 1730 R. 30 as defence. I need not traverse the whole of it.  
 8 Co. 66. For an entire invariable promise of claim or defence,  
 Phil. M. 193. may and almost always does consist of several parts.  
 Thus where in an action of Tresspass, for injury done to the  
 plaintiff's cattle, the defendant pleads in reply that commonly, for his  
 cattle invaded and consumed the plaintiff's cattle that they  
 were not his own, communicable cattle invaded and consumed,  
 and the defendant demands specially to the replication because  
 it was untruthful. But the Court held the traverse  
 good, "for the defendant and consumption, of his own commu-  
 nicable cattle make up the entire point of his defence to the common."

8 Co. 24. b. Whose two points are material, either of them may  
 1. Wils. 330. be traversed.  
 Com. Pleas 10. be traversed.

Another general rule is, that nothing but what is al-  
 leged or necessarily implied in the pleading of the other  
 party, can be traversed. This rule is founded on the first  
 principles of pleading. For a traverse is a denial of the  
 allegations on the other side, and it would be better  
 to deny what is not alleged. For ex. the plaintiff brings  
 an action against A on a promise to pay the debt  
 of another, which of course would be within the vision  
 of the Stat. of Transfers & Assignments, the defendant is not  
 bound to deny, nothing above & a note or receipt,  
 now if the defendant pleads that "the defendant the  
 plaintiff is not his debtor, without this, that the promise  
 was not in writing, he is not in a better position."

That was Pleas 5.

167

The next may be said generally that there was no plea 5, 10, or 11, or 12, but should not traverse a fact which is not alleged. But by That 4 Sec. 10, such a traverse is not on special demurrer and.

And the material point of fact, appearing in the plea, though in the form of a suggestion or insinuation, merely and not of a precise allegation, may, regularly, be traversed. For a material fact, in this case, is meant one which is decisive of the cause of action.

Ann. Pleas 5, 11, 12, 169, 208.

When a party justifies, or in any way confers, avoids, and only of what is alleged against him, he traverses if he relies on a traverse, must be coextensive with the parts not justified, or avoided. This accords with a rule before given, that the whole proposition, in declaration, plea, replication &c. must be answered in the other party. This exception, as in the examples before given, to an action of Trespass, the defendant releases & releases he must traverse that he was guilty after the release. Foot 109. If a defendant he must traverse that he was guilty before the release was made; and if, a license for a particular day, he must traverse that he was guilty before or after that day. This is where the defendant traverse on a traverse.— But the more simple and better way, in these cases would be, to plead the general issue to the parts not justified, or avoided.

To this general rule however there are two exceptions. If the justification is raised on the same day, or



There are two points.

129

Always on to the same point? It is a comparison  
your manner with a base course which is not. It will  
be subject of attack? I need a writer of our own. He  
has prescribed all in an earnest, as will our super-  
fluous. Such inquiries can be made, show that the  
subject has not been well understood. I know the  
substantive use of the law of Gladstone, which can truly  
be said to be superfluous.

In many cases, doubtless, an inducement is fur-  
nished, and then it is not worth while to employ one.  
But in those cases where a direct appeal by a common  
negotiation will answer, or where the facts have since  
been so obvious to introduce new matter, and in such  
instances where the business will not amount to a  
negotiation, but would without an inducement, it is  
unnecessary. But in many cases, certainly, a direct  
appeal in a common negotiation will answer, then,  
a technical business with an inducement must be used.  
It is many times, a wholly necessary to prevent  
a negotiation from occurring, and this is indeed, its primary  
and most important use. This will be manifest  
from an example before you. I am a dealer of a friend  
and Hallway. He said, "Gladstone" and "the manner in which  
it" Now this plea, which he has used as the plea, but  
if he has used it without an inducement, it is simple.  
But there was no bargain at all, and by the aid of an  
inducement, "the" the next day, the same business was done.



How much I have

the way to traverse the best advice in the art of  
and still preserve his course of action. For the inference  
that there was no battery at all is excluded.

2 An inducement may answer a very important  
purpose, when used as a way of protestation. Protests  
however, it is true, are not very common, but they are some-  
times necessary. But after all, it must be acknowledged  
that inducements have often been used, when a  
direct denial by a common negative, would have  
been sufficient.

3 Whenever, the inducement once traversed as to differ-  
ent points, the inducement is manifestly the same, and  
part of the defence for the traverse does not answer in this  
case, but a part of the allegations on the other side.

The inducement is traversed must consist of a  
matter. Much fault had been taken with this rule.  
But it is certainly a proper one, and founded on the  
substantial principles of pleading. Why, it is asked,  
must an inducement consist of a liable matter when  
an issue cannot be taken on it? The reason is this.

When both go to the same point, the traverse is but  
a conclusion from the inducement, if the inducement  
therefore does not consist of a liable matter, the traverse  
will not do. But if they are properly adapted to each  
other, both must necessarily consist of a liable matter.

In the familiar example, where one has before him, since  
-defy, pleads that S<sup>d</sup> is a fool, the plaintiff replies "He is alive

Heinrich Heusinger

without this, that he is dead. Here the measurement that he is alive, relates to precisely the same point with the transverse that he is dead, and consists of equally matter. But suppose the inducement had been one impertinent one "If I was born ten years ago abique hoc (and therefore) that he is dead, the transverse does not follow from it since therefore it is, dead.

The rule then is found also on this, that a traverse is a conclusion, *q. d.* not, from the allegations in the pleading, when both are to the same point.

But, as above, they are to different points, then surely  
the inducement must consist of valuable matter.

For it then constitutes a material part of the chain  
of defence, and may itself be traversed. But this  
is a fault in form, structure, and must be taken ac-  
count of by special armour.

and Traverses, generally reverses the terms of the  
collations Traverse. But this will not always  
answer for many times since a Traverse would be

is bound to a negative judgment. This in an action  
governs the way he constructs his "three legs". He sets  
it aside since particularly matter as to the structure.  
of two abscise loc "that he has constructed three" What? 5 Nov 201.  
Corn M. R. S.  
Lancaster 114  
P. Lane 319.

he will not. He agrees consistently with his travels here  
to protect one and that will support the declaration.

Locini - soft places tender, and on a place, the soft  
explies with a traverse, above the C, that is "tender" and on

## Pleading Pleading

2 L. 24. 24 a  
513.0

5. 11. 20. 11.

Comm. 11. 11. 11.  
11. 11. 11.

2 L. 24. 24 a

a place; this is a negative proposition, yet it is in the words of the allegation on the other side.

Traverse should have some alleged too, but the alleged is over traverse or in manna and for as in his plea he has alleged it for the alleged man ed man, we must find the place in time when it is not material.

There is one particular way of contravailing which requires a different mode of traverse, more from almost any other.

Thus in an action to recover money on an obligation payable on or before such a day, if the deft pleads payment before that day it is not sufficient for the plff to traverse the payment mode et form or before the day on which it is. He must traverse that the deft has paid it either at, or before, or after the day for pay-

2 Trin 944.

2 Trin 944.

ment before as well as at the day is a literal performance of the condition of the bond. Since it is a rule that where one party pleads such a plea as shows his performance on his part, the other must show an absolute breach, (though this is not necessary where he pleads a collateral matter, as a release.

But if the money had been payable on a day certain, the plff might have traversed the plea of the deft mode et form, for that does not make the day part of the issue.

2 Trin 944.

Now observe by the way, as to pleading in bar that where the obligation was payable on a certain day, the deft. should not plead payment before that day, for then.

Prudence and Pleasing

My next effort will support the idea of prudence  
in the case. For a plea would be ill as Special  
Remuneration.

I Prudence, like any other issue in fact, is usually  
followed in the words modus et forma. But they are <sup>of Com. Modus</sup>  
not seen to be necessary, since the want of them is <sup>G. 1.</sup>  
no defect even in point of form. <sup>Lev. 120.</sup>

Emphatic Pleasing



What is a Pleading  
Duplicitous.

Phon. 196.

Co. L. 294. a.

Hobbs 295.

Duplicity is a fault in pleading because it tends to unnecessary prolixity and confusion, and as the case may be, to the reputation of parties. It is prejudicial of all the pleadings.

A double plea is one which consists of several distinct cause or dependent matters alleged to the same

Co. L. 294. a.

3. L. 142.

1. L. 181.

point, that is, the same specific promise of claim or defence, and requiring different answers. Or, in other words, it is one which consists of several distinct and independent matters alleged to the whole or to one and the same part of the claim or defence, and requiring different answers. The policy of the law will not permit a party to allege several promises of claim or defence, where one would be sufficient.

But the giving of different answers to different parts of the declaration or pleading, does not constitute duplicity. The customary plea as to part, the general issue, as to the rest, of special matter of avoidance, or he may traverse a part and answer to the remainder — but he cannot give different answers to the same part — without being guilty of duplicity.

Law. 101.

103.

Co. L. 294.

Co. L. 70.

2. L. 610. 1140.

2. L. 1372.

So also if there are several defendants, each may plead some single matter to the whole, or different matters to different parts of the declaration. For if it were otherwise, one might show a defence, which the other might not approve of and it would open the door to fraud and

That and Plaintiff

collusion between the plaintiff and one of the defendants.

It was holden in a late case, in the Supreme Court, in Maple v. Smith, that defendants cannot avow their pleas, except in actions on torts. The reason of this rule is that if two or more are sued in an action on a contract, they are safe in joining in the general issue, for if the contract is not proved against all, there can be no recovery against either. In that case, I think the decision was a very proper one. Where all the defendants avow the same plea, they ought in such a case to be compelled to join. But where they differ, as to the plea, on which they ought to rely in their defence, it would surely be very strange and unreasonable, to compel them to unite. For, whose province is it to determine, which party shall yield?

According to the general principles on which the rules relating to multiplicity are founded, every plea must be simple, entire, connected, and confined to a single point. But this point need not consist of a single fact. Each party must be at liberty to state all those facts which are constituent parts of his claim or defence. 1. Term 32.  
Thus when an award of arbitrators is pleaded, it is necessary that the arbitrators, the appearance of the parties, the hearing, &c. 2. 7th 18. 1528.  
in order all these facts are necessary to make out their case. 3. 2d 42.  
To show a loss in an action for a malicious prosecution, the defendant pleads that there was probable

176 *Plea and Pleading*

Lon. 6<sup>th</sup> 134.  
879. 910.

Cause, he may and ought to allege all the alleged circumstances which, or to show that there was probable cause. The facts on which that defence must rest may be indefinitely numerous.

2. Hawk. 126. So also when to an action of false imprisonment, the deft would avail himself of reasonable suspicion that the plff had been guilty of felony, he may plead the various causes of that suspicion, as in malicious prosecution. For it will be perceived that all these circumstances, concur to make one point. And in these cases the replication "de son tort &c." answers the whole. When therefore, it is considered, that duplicity is the blemish of matters which require several answers, it is manifest that this does not constitute duplicity.

But on the other hand, in to an action of false imprisonment, the deft relies on any act committed by the plff which justified him. He must plead that by itself, as for example, that, the deft being a peace officer, the plff committed a felony in his presence. This constitutes a complete ground of defence; He has no right therefore to say, that for another offence, a hue and cry was raised against the plff in consequence of which he took and imprisoned him. For this is a new ground of defence which requires a distinct answer from the first, which was of itself sufficient.

Comm. Pleas.  
62.  
Haw. 140.  
1789. 120.

Where the fact relied on in the plea is a mere circumstance from another fact, both may be alleged, without duplicity.

Misandria Murders.

In an action upon an executor, for example, he may  
plead, pleus administravit, and therefore no assets in  
his hands. For if the first allegation is true, the  
second is false. Hence the pleading of the former fact, merely  
shows how the latter has happened.

Don. M. W. 140.  
B. 2.  
Third 140.  
H. 2. 140.

Distinct Counts, each of which, is itself simple, may be in-  
cluded in one declaration, whether they are intended to  
establish one right of recovery, or different rights of recovery.  
Indeed this always appears on the declaration, like dis-  
tinct substantive causes of action.

But on the other hand, if different parts of the same  
count require different answers, as where different cau-  
ses of action are inserted in one count, to establish one  
and the same right of recovery, it is bad.

It is very customary to insert different counts  
when there is but one cause of action, and when the plaintiff  
intends to enforce but one right of recovery. The object of  
doing this is that the cause of action may be so variously  
stated, that if the evidence does not precisely correspond  
with one count, it may with another. Thus it is very com-  
mon for the plaintiff in a promissory note, for goods sold, to declare  
in one count on a promise to pay as much as they were  
worth, in another for other goods or on a promise to pay  
a specified sum, and in a third, on an imputed computation  
or that he should fail of proving an express promise he

3. 781. 295.





Mild and Placid

to recover, be the actual damages sustained in the tort, breach  
breach—pro tanto, and not as in debt on a general bill, <sup>6. 37.</sup>  
<sup>2 B. 177.</sup>  
<sup>2 B. 344.</sup>  
a specific sum in money.

And the rule is the same in Common in debt on bond.  
By an old Statute, the jury is here allowed to assign as <sup>12th. Bond</sup>  
many breaches as he pleases. For here, our Court of Law  
<sup>Custom. civil.</sup>  
Chancery allow the penalty of bonds, and judgment is re-  
versed for no more than the actual damages sustained. 8 P. 126.  
2 W. B. 108.  
1011.

And now, in the English Stat. 8 & 9. Will. III. the same  
provision is made in England. 2 W. B. 377.  
Comp. 357

And by another English Statute the defendant, with leave  
of the Court, pleads to any action, as many distinct defen-  
ces to the whole or any part of the declaration, as he <sup>Lamer. 2720.</sup>  
pleases. This Statute produced a very great change in <sup>4 W. B. 20.</sup>  
the pleadings of the deft for at common law he was <sup>2 W. B. 1090.</sup>  
allowed one defence. And I have always thought it a very  
great improvement. For it often happens that the deft  
may have two or three defences, in selecting from which  
his counsel must be very much perplexed. Now many  
times the one which is best supported in the evidence, is most  
exceptionable in point of law. 3 W. B. 308.

We have in Common no such Statute, or pro vice. The  
Common Law rule remains unaltered. We have however  
another proceeding which is unknown to the English law  
and is in some measure a substitute for theirs. If the  
Court are satisfied that the deft has misnomer supplied he  
will grant a new writ for the mispleading. This alter-

NB. We have  
now a Statute  
Comm. to the same  
effect.

18 Pleas and Demurrers

alleviates the misceid which would otherwise arise  
that, after all, the remedy is not complete. I am told  
must necessarily create much delay and expense.

The English Statute even permits no other than pleas to  
the declaration. So that as to the subsequent pleading

Don. Reader  
8. c.

the rule remains, as at common law, with the exception  
introduced in 8 & 9 Wm. III. The deft cannot plead two rejoinders  
to one replication, nor the plf two replications to one  
plea.

Advantage can only be taken of duplicity, by special de-  
murrer. But I wish it distinctly to be understood that

2 Bar 184.

Lamont 33.

Com. 21. 1782

6. 33. 6. 2.

Leah 2. 9. 5. 78.

Quintrell 21. 1784

1784. 1. 1. 1. 1.

this is by Stat. 27. Edw. 3. & It is laid down in many of the  
books, as if it was a rule of the Common law. Before the Statute  
such a plea was ill on general demurrer. The special de-  
murrer must point out the particulars in which the  
duplicity consists. It is not enough to say that the plea  
is double, or is multiplicitious. He who would take advantage  
of the duplicity must show how it is double or.

But if two distinct answers are given on one side, and  
are not demurred to for duplicity, the other party must  
answer both. He may traverse both, and his traverse will  
not for that cause, be doable. For if he answer answers only  
one, of the different grounds taken in the other party, after

1784. 2. 7. 1784.

4 Bar 119.

declining to demur specially, for the duplicity, a verdict  
must necessarily go against him, for that a verdict he was  
precluded from answering in the rules of pleading. But  
in this case each traverse must be single.

Plead and Pleadings

In observing my remarks on duplicity, I would observe that the rule requiring that the answer should be special, does not apply to cases where a plaintiff joins in one declaration different causes of action which cannot be joined— as distinct and substantive rights of recovery. This is not duplicity, but misjoinder. <sup>in the declaration</sup> Duplication consists in the joining of several grounds of claim to enforce one right of recovery. The object of a misjoinder is to enforce several distinct rights of recovery. Thus suppose a plaintiff should declare on a note in one count and in Power <sup>4 Mass. 11.</sup> T.H. 274. 8 So. 87. in another, the defect were not remedied specially, for a misjoinder of a claim is an incurable defect, it will support a general demurrer, motion in arrest, or writ of error. Strange as it may seem, duplicity and misjoinder, faults totally different, both in their nature and effect, have often been confounded with each other.

How far the rules on the subject of duplicity relate to dilatory pleas, has before been considered under the <sup>(rule 73)</sup> head of dilatory pleas.

Prosser and Byer.



Mass and Readings

Profer and Oyer

It is a general rule of the Common Law, that when a party  
relates on, or otherwise pleads a deed and a make little use  
of it, he must make a profer, or plead it with a profer.  
3 Mo. App. 22. The meaning with a profer is meant, averring that he  
"tender the said deed into Court" or in Comstock "as by  
the deed ready to be shown in Court fully appears."

This is made that the adverse party may have it,  
and a copy of the deed, and that the Court may inspect it.  
3 Co. 38. The having oyer is meant, that the other party may have  
it read to him, or in the word imports "may" "hear it  
read." 10 Co. 93. This was the ancient method, when few persons were  
able to read themselves, and therefore the party avers that  
Com. Pleas. 77 he may hear not that he may see the instrument.

3 Co. 38. The adverse party is then entitled to aver is not bound  
to plead without it. But if he does, he waives his right and  
cannot afterwards demand it.  
3 Co. 285.

Profer is never made in England, of bills of exchange,  
or promissory notes for they are not deeds or specialties,  
that is, they are not instruments on which the action  
is founded, but mere evidence of the agreement.

In Connecticut, however all unsealed writings, containing  
express promises (if proper) on the face of them to pass im-  
mediately for order received, R.P.B. or covenants, are treated as deeds.  
Hence we make profer of a note of hand, as much as of a  
bond. In this subject some distinctions are to be observed.

Plas and a Plea only.

If a right acquired by deed, will pass without deed, he who claims the right is not obliged to plead the deed, and of course, is not obliged to make proof. Thus the enjoyment of a house is good at common law, without deed, and therefore the party possessing it, need not aver it to be by deed. 5 Bo. 38. a. b. 113.

But if a right acquired by deed will not pass without deed, it must be pleaded, and then, if he makes title under it, he must prove it with a proof. Thus, at common law, the grant of an incorporeal hereditament, can only be by deed. Such deed therefore in case ad eundem, must be proved with a proof. 1. 2 Bulst. 119. 12 Ann. 9. a. 3. P. K. 150.

But where a right will pass without deed, yet if the party pleads the deed and makes title under it, he must prove it with a proof, though if he pleads the deed without making title under it, it need not be with a proof. 2. 113. a. 50. b. 38. 12 Ann. 97.

By making title, is meant, forming his claim, or defence on it. Thus suppose the plaintiff brings an action against the defendant for a fraud in the sale of goods, and declares that by a bill of sale, the defendant sold him goods and delivered him; he need not make a proof of the bill of sale, for that is only inducement, and not the procuramen of the action.

And it is a general rule, that a stranger to a deed may plead it without proof, because in common presumption, he is not supposed to have the control of it, though if necessary for his defence, it may be brought into Court by a sub jura dicitur. 1. 113. a. 50. b. 38. 12 Ann. 97. a.

## Real and Personal

The rule is, in general, the same as to any other issue, comes in evidence by operation of law, as for example a title out in answer. She, to assert her right may plead a deed of her husband in his lifetime, without a profit. For the title does belong to the heir at law, and she is not supposed to have them under her control.

But on the other hand, there is an exception, in the case of a tenant by the Curtesy. If he pleads the title deed, he must plead them with a profit. For he is supposed to have them in possession, and to retain them during his life.

But Princes & dukes, that is, princes with the original prerogative must make profit in those cases, in which the original prince himself would have been bound to;

So if the heir at law make title, by deed to his ancestor, he must plead it with a profit, except, perhaps, when one is heir at law to his mother, and his father still survives and is tenant by the Curtesy; for then he is not presumed to be in possession of the title deeds.

But a party who pleads a record, need not make profit out of it, even though he claims under it, and it is of the same Court in which the plea is made. A fortiori, he need not, if it is of another Court. For records, though they may be foundation of a man's right, are not the private muniments of his title. They belong to the Court, and the parties are not allowed, at libetum, to take them from the office. But by the English practice an administrator must

Co. Lit. 225.

226. a.

5. Co. 75.

10. Co. 94.

Co. Lit. 227.

227.

10. Co. 92. 94.

Lawr. 97.

2. Max. 237.

Bulst. 14252.

Co. Lit. 225.





# First and Second

in relation to a decree under which the parties are to be

referred to the decision in Good but in more

or less. In the Court's process on this ground

that is, it is not necessary to enable the parties

to be heard, but here over is a decision that the Court

when it is said to be granted whether the Court is to

or not. This practice seems to be as common as a rule

but however in the Court's process here it is to be paid

in the Court's process here it is to be paid

in the Court's process here it is to be paid

in the Court's process here it is to be paid

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in the Court's process here it is to be paid

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in the Court's process here it is to be paid

in the Court's process here it is to be paid

in the Court's process here it is to be paid

in the Court's process here it is to be paid

Nothing more common than to allow the parties  
to make affidavits as to mere matters of fact.  
The reason why he is not admitted in this case, and  
he had of copy goes into the file, seems to me determined  
by the way the whole evidence is laid out matter to the jury.  
instead of making the copy, it was probably the first record-  
ing leaf of the execution. The instrument must be intro-  
duced as I think Section 800 would require at the very

It seems that secondary evidence is also admitted when a copy, present on one side is impugned on the other side. In this case however, he must have first given notice to the other side. Ex. 2. 2. 2.  
But he is required to use all such means to obtain the primary before he can be allowed to introduce the secondary evidence.

There is no doubt that when the fact is made known  
that the other is entitled to care. But he is not an en-  
titled of property was unconscionably made and the party  
reading the same does not make the will consider it. For  
the fact is not, and so more in

[illegible]

There are two things

to be considered

Travelling over a river, the water is not so much  
error but it is in a position to be so, & it is so.

The unneccessary is another of the errors in the present system

37th 498. harm, for it does not affect the state of the river, & it is

Lawes 99.

1st June 9.6.

2nd June 9.6.

6th Nov. 28

with the object of it when it is to be so, & it is so.

But it enables him to take advantage of the error the

party claims & so on, must enter his power on the ri-  
ver, & the river will not appear as the error  
can be removed on it.

On 20th Dec. the party obtaining it may enter the  
river & so on, must enter his power on the ri-  
ver, & the river will not appear as the error  
can be removed on it.

37th 499.

Lawes 99.

6th Nov. 28

description of it in the present of the other party

if the the action is on a general bond he may enter

the condition, and please performance.

But having received it, if the instrument is not  
on the face of it to be entered, & it is not entered, & it is not entered,  
it is not entered, & it is not entered, & it is not entered,  
it is not entered, & it is not entered, & it is not entered,

the action is on a general bond he may enter

37th 500.

Lawes 99.

but does not appear he may make it a general bond

and then suppose the difficulty on a general bond,

it enables him to leave the performance of the action

to write the condition, otherwise it is not entered,  
the action is on a general bond he may enter

Plan and Planes.

was not appearing on the record, But must be covered. 3. 88.6 342  
Laws. 89.

If the deed is fully recited on record, the above parts may be a judgment, as for want of a plea. Because the facts occurred and obtained were immediately considered, & set aside the instrument written in record; his rights in property then on the test case which is broken.

Or, he may receive the instrument in this case, Do 227. 60th 301.  
L. 300. 9.6  
315. 317.  
47th 370.  
& be enrolled, in record, as an officer of the Court, and then remove.

Departure.



# Plead and Pleading

## Departure.

Departure in the language of pleading is the assertion of a defence or claim, for another which is inconsistent from it, and does not justify it.

It is every case in this title, that in every case of the pleadings that which is pleaded is intended to be such that the defence does, pleaded on the same side. The defendant should not retract from his declaration, nor the defendant his bar, but the replication should support the former, and the rejoinder the latter. Thus suppose the declaration a plea in bar and on that being an issue as to the plea, plead in his rejoinder a plea in tail, or

concoissance to lead out and release. This is a departure.

And if the matter first affirmed on one side is not at Common law & subsequently plea supported by particular custom is a departure. Thus, suppose an action on an indenture of apprenticeship, and at Common law, defendant pleads in bar, which at Common law is a defence, plaintiff replies the custom of London, by which it is no defence, this is a departure, for so to raise another issue, or to raise a new particular custom, the action is repugnant to that custom, and so is called a departure, and is allowed to return a defence, because in the replication he has taken in his declaration.

So also a plea asserting a right in Common law, and justified by another Common law title is not a departure, but in taking cattle, and pleading that he took them

3761.310  
Co. Lit. 203.6  
304.4  
Hargr. 422,  
Term. 22.  
L'Ha. 449.  
2. 70. 71. 72.

2. 70. 71.  
2. 70. 72.  
2. 70. 73.

His answer is, that the state would subject him, though not in the common law. <sup>3 Dec 81</sup>  
This was a departure. For his declaration, in answer to  
common law, when an answer is given to that he  
shall not be allowed in his deposition, to prove the state  
on a statute.

But does place a Statute, and the other replies  
that it had been repealed a reminder that it has been <sup>12 Dec 81</sup>  
received will not be a departure, in this respects the  
original record.

If in covenant broken, the deft pleads performance  
generally, and the plff replies that he has not perform-  
ed a particular part of the covenant a reminder being  
and ready to perform and disclaimer performance is his  
in departure. For the plea in bar allows an answer for  
it means, and the reminder implies acknowledge that <sup>12 Dec 81</sup>  
he had not performed and a discharge and disclaimer <sup>12 Dec 81</sup>  
of the plea. So if the deft pleads "in bar" and the plff re-  
plies "negotiable" a reminder of a release is bad. For <sup>12 Dec 81</sup>  
though it would have been good of pleasure to the de-  
claration, it cannot be afterwards introduced in the  
discovery of a former plea.

When the declaration is allowed generally in the de-  
claration and the deft pleads matter of avoidance or in-  
jection, a more particular statement of the state of  
affairs in the declaration being of necessity made to the departure.

Massena Massena.

[illegible]

Repasture however, is aimed to versify. Now, for the purpose of explaining the reason why it is ill on general denunciation, and yet aimed to versify I would observe that the rule that it is sincere by versification, presupposes that enough appears on the whole record, to entitle the pleader to inducement — as in the example before you, soft pleas, "infancy," ill repute,, "no expiation" no previous release, and this is counted by the versifier. The versifier finds a good excuse though it is an abandonment of the principle of inducement may therefore be denounced upon it. Why then it may be asked is it not good on general denunciation? The reason is that a general denunciation does not comply with which are all pleaded.

221. 222.  
 May 22. 94.  
 Sta. 422.  
 L. 2. 165 or 288

Aug 2. 86.  
' 20. 110.  
1. Lamm. 7.  
2. Lamm. 84

Demerses.

Heads and Neckings

*Demurver.*

I humbly recommend a removal of the local expression of the allusions to which it extends.

It admits then such matters of fact as being the act of 3. B. 34.  
our people as are well pleased, but denies their opinion  
is valid; and thus raises the question of law and is only  
a mere allusion to the Court.

It will be perceived that a demagogue always & always  
as a local proposition — Of place, propounds a question  
advances or denies some matter of fact. I demagogue  
place — in truth, not a place but, as it is man-  
kind called an excuse for non persuasion. Perceiving  
I have said enough I perceive the English form of  
a demagogue shows that it is not a word and a fact.  
a, that the great demagogue had no occasion, and is not  
honored by the law of the land to answer it. I say by  
this reason Mr. Lawes could not see exception or contradiction  
in any of his pleadings.

A Librarian may be taken to any part of the place <sup>to his, &c.</sup>  
up to the declaration, say, replication & answer to suits.  
Two piers, covered as to some others. The piers, seems  
to be the place, or, established in common use. But  
intimately it should be concerned upon the Massachusetts,  
and so it covers all well known technical works. For to be  
more named to cases — at — or re upon x.



Plaid Jan 21 1822

A demurrer, which is a species of motion, is a plea in law no other facts than such as are already admitted being set to matter and form.

All common law mere defects in form, were removed as well by general as by special demurrers, but since the Statute 27 Eliz. and 45 Eliz. a disadvantage can only be taken of formal defects by special demurrer.

Don. Pleas  
Q. 57  
20th 235  
Laws. 187  
Pleas. 338

A general demurrer confesses all facts informal allegations as are aided by their Statute and thus in general, and all informalities.

18th. 248.  
20th. 191.  
Laws. 218.  
Pleas. 279.  
285.  
Don. Pleas. 23.

Thus in Pleasant when the plea is general one because one and another ill and the plea demurs to the whole either generally or specially as the case may require

20th. 10.

A matter being or ill pleader is itself a cause of demurrer.

18th. 24.  
20th. 235.

Also a demurrer never confesses an avowment which contradicts what before appears certain on the record. Thus if one pleads a former record to which he was a party and then makes an avowment inconsistent with it, a demurrer does not confess the avowment, for being inadmissible on the ground of estoppel, it is not well pleaded.

18th. 10.  
Don. Pleas. 26.

It never confesses an avowment of what is impossible. It never admits facts averred which cannot be legally proved. The avowment of such facts is itself a cause of demurrer.

18th. 442.  
20th. 178.  
Laws. 192  
6th. 254.

# Plea and Pleadings

175

This may be illustrated by the example of a verdict  
 contradictory to a subsequent agreement. For the party  
 is estopped to prove the agreement. So if to debt on bond,  
 the deft pleads a release without showing it to be in deed  
 his plea is bad (for the reason in d. supra) and therefore the  
 fact is not admitted as a demurrer.

1 Br. 442.  
 2 Wils. 375.  
 Dalt. 192.  
 Co. p. 254.

A demurrer never admits allegations which are im-  
 pertinent or not material or traversable. For the Court takes  
 notice of the judgment, and nothing is considered which does  
 not affect the adverse party's claim or defence.

Lark 53.  
 100. 100.

A demurrer never admits considerations of law made by  
 the adverse party from facts stated - for matters of law be-  
 ing determinable by the Court is not a subject of admit-  
 tance on the pleadings. If a party should agree on the  
 pleadings, to a legal proposition which was not correct it  
 would do him no harm. Thus in a plea of justification a  
 demurrer to the plea does not admit the "probatum est"  
 in this is the very thing which is meant to be denied.

Richard 58.

After an issue in fact joined there can be no demurrer  
 for an issue when joined across the pleadings. For rule  
 however, for suppose that the issue tendered on the one side  
 is joined by a demurrer on the other; since an issue improp-  
 rily tendered is never unwisely a subject of demurrer.  
 Even the case arises when the court is "not permitted  
 to solve a stated" may be demurred to.

A demurrer is generally called an issue in law. But this is not  
 however, not strictly correct, a demurrer being an issue

2 Pl. 453.  
 100. 100.

John and Mary

in law, but the law is not so, & will the opposite party  
win in the cleaver. The superior the superior is not  
superior in law. The principle of the law is not  
important, but is an alternative and a negative one  
the other one is.

You cannot be a demurrer to a demurrer. Such a pleading  
 would be a superfluity on the part of him who takes the  
 second demurrer. Lord Hale says that when there is a de-  
 murrer to a plea in abatement the demurrer itself may  
 be demurred to. I confess I do not understand how this  
 can be. A demurrer taken to any part of the pleading, whether  
 a plea or not a plea, raises a question of law whether it can be  
 supported or not. If it is unavailing, the plaintiff goes  
 to answer it, not to any fact or merits, but a demurrer  
 merely to taken to fact. Mr. Lawe is not assent Lord  
 Rolle's distinction.

It is a general rule of practice that when a demurrer and an issue in fact are joined in the same cause, as they now are, the demurrer is regularly not to be determined. L. 277 72 a.  
125. b. The Court is discretionary with the Court, but it is Term 517. always the most convenient usage. For if the demurrer is first determined since the issue afterwards, and the issue not for the same party, this may then afford reasons on the whole. But if the issue in fact is first tried it would be otherwise.

Thus said the angels  
mercifully appeared in the wilderness. Thus in an ad-  
dition to covenant between where several blessings are laid. John 1:19  
John 5:7  
one of which is ascribed to, and the other two of which, of the  
offspring of the wilderness. So many on the a world.  
and the rest, and a time judgment on the.

in the form of a commutative set. *West. 1887, 23. Linn. 243-244.*  
It will be perceived from the form that in *Concordia*,  
it is usual to conclude a commutative with a copulation. *Linn. 170.*  
A copulation, however, seems to be unnecessary. *Linn. 24.*  
The form is necessary, as it is a commutative. *West. 1887, 23.*

In civil cases the jurisdiction upon a deamurer, ex-  
cept when it is taken to a collation place, is peremptory.  
But, in chancery, when taken to a collation place, the  
jurisdiction is for the party to answer vice. If then the defendant  
demurs to the collation and the deamurer is overruled,  
expensis, is recovered for the plaintiff to recover, and not for  
the defendant to answer vice. And so if the plaintiff demurs to the plea  
in law, and the deamurer is not supported, judgment  
per appaint the plaintiff. Whether the deamurer, the de-  
murer therein is supported or overruled, either way, the  
argument is equal.

Book. 306  
Page 57, 341.





W.D. 88  
E.D. 72  
The 2nd  
of March  
x 3. 1/2  
Carm. River  
v. 5.0

Vol. 232.  
Lam. 705  
802.

Q. 232-3

a separation is made by passing through a very general one and  
is this: "Whatever is in that which the vessel of the same  
will sufficiently expose to the Court." *See, within this rule.*



## What and Pleasing

70

To be a special pleader more according to the  
substance of the form. The reference by the special pleader  
must have been a substantive one and not a  
reference to another form.

Where there is a total want of substance in one  
and another in Pleader, for calling some form, a gen-  
eral demurrer will answer. And so also if a mate-  
rial addition is omitted for there there is a substance.  
Thus if in Pleader the gift is omitted to take 3. 7. 1. 394.  
like the property to be his own, or in form he does  
not use possession, advantage may be taken of the  
omission, his name as demurrer. For the object of the  
first action is to recover, improve, arising from the con-  
version of the first party and of the second, from the vi-  
olation of the condition of the gift; and if neither of these  
appear in the declaration, the substance of the action is  
omitted.

If a party pleads that which, on the face of the record, he  
is estopped from pleading the other new demurrer, generally  
to maintain the matter of estoppel & specially.

A special demurrer reaches no other formal defects  
than such as are assigned specially, as causes of demurrer.  
Proceeds generally, all defects in substance. The reason  
is that as to defects not specially assigned, it is a gene-  
ral demurrer.

It is a general rule that if a demurrer to the declara-  
tion, judgment is given to the plaintiff, no similar, or some other.



# Wheat and Pladinger

6 Nov. 23.

V

second action even afterwards be maintained in the same cause. It seems to the just that certainly cannot be the best way then please the become necessary in bar.

6 Nov. 23.

v. B. 7.

v. B. 35.

687. 688.

Nov. 24, 72.

4 Dec. 189.

3 Feb. 241.

But to make the cause the same within the meaning of this rule it is necessary that the same process of elimination should have been disclosed in the first declaration as in the second. The reason is that a trial is deemed decided the right in question must determine the controversy. In otherwise litigation would be endless.

But if the plaintiff fails or omits to, in his first action, to state of an essential allegation in his declaration, and in such that allegation in his answer, the judgment on the first action will be no bar to the second. Thus if A sues B in London, and omits to state that the witness of whom he was base, and fails or omits to, for that effect, this judgment will be no bar to a second action in which the party is involved in the declaration for the whole cause of action is not the same, since there are some disclosures in the second, which are different from those disclosed in the first. The first action failed not on the legal merits of the case, but from a mistake in procedure. Suppose the first action was decided non est because, if the plaintiff had brought the fact for force, and then raised the proper action. The judgment 20 claim in the first action, would be no bar to the second, for in the first action the two were not concurrent. The question to be asked is, "Has there or has there not been a final judgment deciding the right now in controversy?"

Plaid and Wadding.

So also a plea is barred by a former judgment, be the suit of the 3d. 81. 668.  
bill, or the personal plea, or any plea to the action, and the 6. Co. 7. a.  
same distinction was to be observed, as in the case of a demur-  
rer. After the right has once been determined, he cannot have  
a subsequent action for the same cause.

But in England, a judgment against the plea in one re-  
al action, is no bar to another action of a higher nature. For the  
action of a higher nature is not similar or concurrent with 6. Co. 7.  
the first. And though the same subject may be in contro-  
versy, yet a different right in law, is claimed. In England  
there is a privation of real actions, each is crafted to the trial  
of one sort of right.

This rule however, can have no application in Connecticut,  
for we have but one action which can with any sort  
of propriety, be called a real action - the action of Ejectment  
in, and this is strictly a mixed action for it is brought  
this title for the recovery of damages, as well as the  
reality.

In the States of Massachusetts and New York, they have re-  
al actions.

But though the declaration is insufficient through a  
mistake in pleading, yet if the defendant takes no advantage of  
it, but makes a plea in law, or a plea to the right of the 6. Co. 237.  
case is found for him, the plea shall have no other action 6. Co. 120.  
for the same cause, for this insufficiency notwithstanding  
as the sufficiency the merits have been tried. The  
sufficiency of the plea in instance of a bill of exchange, being so an

Madam & Madam

action against the indorser, and omit to allege where —  
L. N. 20. This is a defect which even a verdict for the plaintiff will not  
Ames. 29. cure, but if the indorser makes a third assignment of  
the signed paper to the action, as a release, for example, which  
is found for him, the plaintiff can maintain no subsequent ac-  
tion for the same cause. Because the claims being ident-  
ical it appears that the right has been tried.

But on the subject of a former instrument bearing a  
subscribed action, it has been determined in England  
and in Massachusetts, that a former assignor of property,  
in falsely recommending, &c. as whether or not it is no bar  
to an action against him, on the contract which that recom-  
3. S. P. 17. 20. mendation is, and a him to make. For the first action  
commenced in Malpractice, and not in contract and the same  
once recovered were not a barment to the plaintiff in the second  
but a permanent bar to the plaintiff in the second, and a bar  
and in the third.

I do not mean to extend to the whole of the plaintiff's  
on the other side, unless some part is otherwise answered.  
Lewin. 17. 2. For if the defendant answers to a part an answer to the  
Lew. 17. 2. 1. rest, it is a discontinuance, and the plaintiff may take pro-  
ceedings for judgment. And on the other hand if the  
plaintiff does not answer the whole of the plea, the defendant  
may take judgment for want of a replication.

A defendant reaches back through the whole chain  
and attaches before the first substantial defect in the  
plea. So that though the defect is in some one of the  
links

Richard. Whittington

For the price of the Sun I have seen millions of people  
whose secret and he who is their substitute will reveal  
to expose the declaration is insufficient, and the system  
of "summers" mixed & "good" better in the end  
to the "summers" to that. Since the summer war has  
the declaration as well as any other part of the plan  
and attacks on the first substantial defect, as that  
though the plan "summers" is not bad, it is a bad one,  
for a bad declaration and a common plan or a common

the plate. Again, suppose the excitation - a padrone  
but the plate in base, and replication are both base, and  
of the plate remains to the replication, as soon I have ex-  
cited him for the same reason as the other. upon the first  
replication on the second, which was a big plate in base, and  
a previous replication in road concern for a little while.

and this will explain the second course of proceedings  
involved in steam blasts. The subject however will manifest  
itself more & probably later, which he knows to be best to de-  
vote the gift into a resource which will attach upon his own  
hold at once. By making passage of a plea in bar, he will  
withdraw the attention of the opposite counsel from the de-  
fect in their declaration, which has been occurred in the first  
place. This would probably have discovered and amended.



*Food and Clothing*

3. Co. 12

8. Co. 129, 6

Co. 153-201

disposition, though the first fault was in his plea. The  
 error of his case shown. But generally, in a case of  
 great doubt the vice versa of a case does not appear in  
 its relation and that is considered in the nature  
 of a hypothesis & the occurrence which does not admit of  
 the conclusion. So that evidently the first substance  
 which is in the "relation" of the 1st.

If the act relies on several places in law, in  
 2. How, 784 under the Statute in case of the Board in May 1800, and  
 1. Board 80. one of them is observed to and a former judgment  
 will be for the act. Though the issue on any other ground  
 2. and 3. but the evidence is supported as that on  
 the whole, it appears that the 1st has no cause or reason.

## Remarks to Evidence.

It sometimes is evinced. Roughly att. seen with some inter-  
est is one of the most much respected parts of the science  
of gardening. It is not however any familiar subject.

Thus suppose that in fact on board, and more of position  
Hence the gift is of principle that, the various in with it  
and that the other, and that the gift is a counter to a  
value for gift itself, because when the other is under the  
the fact, state the various state of the gift in this case there  
is no kind of no need of something, we are the evidence the  
on. I have must be, because for the gift. But what if he  
wishes to take the examination from the Government refer  
to the Board, no more necessary to the evidence on an in-  
crease.

Two rules, *Miss Lloyd*.

The circumstances must also be taken to the whole of the evidence or rejected on the other side. So the question is whether it conduces in this to maintain the proposition contended for by the party who produces it.

And from the nature of the case I consider that the circumstances can only be taken to the evidence of *David Scott* that *part* who takes upon himself the *onus probandi*.

8th 215  
where *David Scott*  
is the *onus probandi*  
is the *onus probandi*  
is the *onus probandi*  
is the *onus probandi*

Success his evidence is always *pro* or *contra*.

The relevance of evidence is always a question of law to be decided by the Court. If relevance being established, the question *how far* it conduces to prove the issue is left in controversy is a matter *that* the Court determines in the case. All the law is in the evidence and the Court is to decide upon it.

It follows from this that it may be necessary to consider evidence which is clearly relevant to the whole of the case, or which may be of great value in the case, but which is not evidence which conduces in the case to prove the issue. In such a case the Court cannot remove it if the case is proved by the evidence, for the Court must decide upon the weight of the testimony, and it is not relevant to the issue.

One then has to determine what is relevant and what is not.

Evidence is always relevant to some issue in the case.

Misad and Misdirection

concludes in any degree to prove, however weak, base, or inconsistent, or incredible it may be. & of its course  
none to prove any part of the case. It is self-evident and can  
not be denurred to, be that would tend to be in question  
of fact to the Jury.

The denurver but can refer to the question of fact.  
and refer to the Court the application of the law to  
the facts shown in the evidence. It follows then, that  
a denurver to evidence must submit the facts shown Co. 14, 15  
2 R. 1205  
253  
in the evidence, and like all other denurvers submit  
to all operation in favor of the adverse party to affect  
the issue.

And, on the one hand, evidence which is not  
sent to the whole issue however weak can never be  
necessary to do on the other evidence which is irrelevant  
however strong never always be denurred to. I am here  
supposing that the whole evidence is irrelevant but of course  
first it is irrelevant to the whole issue & is irrelevant.

It is manifest from the nature of the thing that the  
facts must be ascertained before the question of law  
can arise upon the denurver. A denurver to evidence Co. 14, 15  
2 R. 1205  
254  
is to take as not to settle the matter of fact, will not  
enable the Court to receive any argument at all.  
be then so much upon the fact that facts must then  
be ascertained on the face of the record. In each case  
the law will then receive its force to the issue.  
The denurver as to the general nature and use of a denurver  
to evidence.



# *That and Pleading*

I will now consider in what cases and in what way evidence must be deemed to.

When the whole evidence in support of the issue is written it is always a subject of disclaimer, and the party exhibiting it, must join in the disclaimer or waive the evidence. For by the writing the evidence is made certain so that there can be no variance in pleading. *See 3 B. & C. 171-2. 1 B. & C. 172-3. 1 B. & C. 173-4. 1 B. & C. 174-5. 1 B. & C. 175-6. 1 B. & C. 176-7. 1 B. & C. 177-8. 1 B. & C. 178-9. 1 B. & C. 179-80. 1 B. & C. 180-1. 1 B. & C. 181-2. 1 B. & C. 182-3. 1 B. & C. 183-4. 1 B. & C. 184-5. 1 B. & C. 185-6. 1 B. & C. 186-7. 1 B. & C. 187-8. 1 B. & C. 188-9. 1 B. & C. 189-90. 1 B. & C. 190-1. 1 B. & C. 191-2. 1 B. & C. 192-3. 1 B. & C. 193-4. 1 B. & C. 194-5. 1 B. & C. 195-6. 1 B. & C. 196-7. 1 B. & C. 197-8. 1 B. & C. 198-9. 1 B. & C. 199-200.*

For the question how far a party exhibiting a written document is bound to join in disclaimer seems not to have been fully settled in the old authorities, though I think it is now. *See 1 B. & C. 171-2. 1 B. & C. 172-3. 1 B. & C. 173-4. 1 B. & C. 174-5. 1 B. & C. 175-6. 1 B. & C. 176-7. 1 B. & C. 177-8. 1 B. & C. 178-9. 1 B. & C. 179-80. 1 B. & C. 180-1. 1 B. & C. 181-2. 1 B. & C. 182-3. 1 B. & C. 183-4. 1 B. & C. 184-5. 1 B. & C. 185-6. 1 B. & C. 186-7. 1 B. & C. 187-8. 1 B. & C. 188-9. 1 B. & C. 189-90. 1 B. & C. 190-1. 1 B. & C. 191-2. 1 B. & C. 192-3. 1 B. & C. 193-4. 1 B. & C. 194-5. 1 B. & C. 195-6. 1 B. & C. 196-7. 1 B. & C. 197-8. 1 B. & C. 198-9. 1 B. & C. 199-200.*

But the law is now well settled, and will be best illustrated by the following rules.

1. It is clearly settled that where the evidence is all in writing, the party may join in the disclaimer, if they will.
2. It is also settled that if one party produces any formal testimony, to prove any defect, that the other party may be admitted to contradict the evidence, or waive it, for when the fact is a matter of course, it is

Thompson's reasoning

241

reads to this effect. This is a case, however, which will not  
often occur, in the basic fact situation to be proved  
will almost always be relevant. Therefore in order to introduce  
evidence to show that the defendant is guilty of the crime  
of perjury in keeping his good name in this case is the right  
evidence to take the examination from the way he might  
safely admit the fact of perjury and so on, it is right  
to join in the demurrer, or waive the evidence.

I conclude I to be now well settled that I have  
evidence, admissible in support of the issue, is certain, i.e.  
direct and express as contradicted, decided, from circum-  
stantial and undetermined the admissible and may  
open all men who introduces it to join in the demurrer  
or waive the evidence. But I know over that because  
the party pleads I will not agree that it is the cer-  
tain. This is known is submitted to the Court. There is a con-  
sistent opinion of the subject by Chief Justice Chase in 2. 5. 1847.  
Some courts with only this evidence that he has  
be granted that in these are well understood.

4 If the evidence in these cases is not admissible  
the admissible facts cannot occur or be determined. This  
kind is to be certain and undetermined as well as the  
fact in the case, the admissible, in my opinion, whether the  
evidence is not admissible as fact, and so on, as to  
the rule, as well as the other to join or waive the evidence.  
But without such a joining in the demurrer, or waive  
the evidence. And in the case the fact is not admissible.



11th and 12th

23

in the year 1800. The evidence to prove

If the party concerned was not in the way and

was made the assumption on the case of the  
the evidence required for the case was not in the way. Feb. 1802  
4. B. 1. 57  
2. 11. 27

the evidence required for the case was not in the way. Feb. 1802  
4. B. 1. 57  
2. 11. 27

the evidence required for the case was not in the way.

the evidence required for the case was not in the way.

the evidence required for the case was not in the way.

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the evidence required for the case was not in the way.

the evidence required for the case was not in the way.



Rebecca Washington

2. The <sup>2d</sup> consideration of the Board is whether the evidence shows  
2. May 21, 1877  
Doyle 208711  
that it is such as ought to be left to the jury in support  
of the charge joined or in other words whether it is sufficient  
evidence in law to maintain the charge.

4. 73a-73a.  
Buller. 314.  
Alegu. 188.  
2 H. 73a-205-8

Read and I have been  
 to join. It is not the same as to the present and  
 there here is a minister of course. For there is no  
 substantial chance of access to conscience. The  
 will not allow it. Let inside should be changed in  
 fearless pretence.

When these circumstances are considered, and the  
 in the same the small degree of the least that should  
 be in the same, the same is the same. The same is the same.  
 And to what it is to take the same from the same. The same is the same.  
 and the same to the same and the same is the same. The same is the same.  
 just to admit and agree to the same. The same is the same.  
 But this is not necessary as the same is the same. The same is the same.  
 and the same to the same as the same is the same. The same is the same.  
 So of the same is the same as the same is the same. The same is the same.  
 and the same to the same as the same is the same. The same is the same.  
 But this is not necessary.

The same is the same as the same is the same. The same is the same.  
 and the same to the same as the same is the same. The same is the same.

If any proper consideration is objected to, is admitted  
 by the same. The same is the same as the same is the same. The same is the same.  
 for the same. If not the same is the same. The same is the same.  
 and the same is the same as the same is the same. The same is the same.  
 case. I am not for the same of the same. The same is the same.  
 and the same who have the same. The same is the same.  
 and the same of the same as the same is the same. The same is the same.  
 and the same is the same as the same is the same. The same is the same.

There is no doubt that it is in the same as the same.



Arrest of Paul, arrest and Repleader.



Mass and Massinger

37th 393. parties have not put in issue. The facts in question are not ascertained. And in an action for money, it is held in the declaration that the defendant the plff is a bar brought and the jury find that he did the plff will be a bar ex p.

37th 393. But no man, and must, bequest to arrested for some defect in the proceedings. If then the declaration is not independent, and discloses no cause of action, the plff must be judgment, though he may have received a verdict. For as the supposition, "the law have found certain facts which are not a title him to a recovery."

37th 395. And on the other hand of the def has obtained a verdict on a plea which discloses no ground of defence to the plff. And the plff may arrest the judgment, as if to set aside, or judgment. The def pleads not guilty, and the jury find that he is not guilty. Judgment may be arrested, for the plff never said he was guilty, and the issue was therefore immaterial. Though if the verdict had been for the plff the def plff would not have arrested judgment.

37th 77. After verdict it is a general rule that judgment may be arrested for any error, which might be corrected for error after judgment. For arrests is immaterial in surmounting. If a verdict would be erroneous, it would not be rendered.

37th 718. To determine "what is sufficient" and "what is not" after verdict, we are under the necessity of depending on a number several rules.

Third and Fourth

A general rule has been by Lord Mansfield <sup>Quinton & Reynolds</sup> <sup>218</sup> <sup>Black. 252</sup>  
this: If the statement of the plea tells and the verdict <sup>Black. 252</sup>  
must rule, is repetitive, it is reversed by a verdict in  
his favor. But if no tittle or cause of action, or a re-  
fective one is stated. The declaration is not reversed by  
a verdict. The rule is here given with more preci-  
son, than by any other author, before or since. For-

ample. Suppose the plea in an action of Trespass. 3 Bl. 399.  
says it is not to be, except that he alleges 3 Bl. 365.  
no clear certain on which it was committed, and 3 Bl. 1023.  
obtains a verdict. Now the verdict a verdict to the 3 Bl. 397.  
rule, and the verdict? It clearly does, for here is Replevin 3 Bl. 389.  
enough to be in the declaration, to entitle the plea 1 Bl. 181.  
to a recovery. The verdict is in the statement, and  
not in the verdict itself.

In the other hand,  
suppose an action brought against the plea for ca-  
ving the plea a few, and states with all necessary 3 Bl. 394.  
circumstances of time and place. Now here is no action 3 Bl. 394.  
of action disclosed, there is no substance in the words spoken. Is this reversed by a verdict for the plea?  
It is not, and cannot be, for the reason, given in  
the rule. On a plea, suppose in Trespass, the plea does 1 Bl. 181.  
not allege possession in himself, the verdict does  
not and the verdict for the very plea, and possession  
of the action of Trespass, is in every to the possession  
of the plea.

These same reversals conversely, are applicable

## Lead and Measure

3. Bl. 395.

1. Bl. 145.  
545

4. Bl. 478.

7. Bl. 518.

3. Mar. 1723.

Canth. 389

to the defence, pleaded by the depts. As where the depts. obtained a verdict on a plea of not guilty, to an action of debt on bond. The fault was not in the plea, as it was by the verdict; for the issue presented, by the plea, once found by the jury was immaterial, and the defect was not in the statement, but in the defence itself. This rule is a very good one to determine what defects are and which are not cured by a verdict. Still there are other presenting different criteria inform, amounting to the same thing.

Another invariable rule is that any defect in the pleadings which will support a motion in arrest of judgment, must be such as would have supported a general demurrer. But this rule does not hold, in every case. It is no invariable rule that whatever would have supported a general demurrer, will support a motion in arrest, for many defects which may be raised by general demurrer, are cured by a verdict. If we note, it would be nonsense to talk about defects being cured at all. Thus if the declaration, for example, omits some material circumstance, without proving which the plaintiff ought not to have had a verdict which circumstances are supplied from the facts which are alleged and found, the defect is cured by the verdict, though it would have been fatal on general demurrer. Thus if in

4. Mar. 76.

3. Bl. 394.

Canth. 389.

in 2. 41.

5. Mar.

Phyllis Hastings

in a close & true paper cover. The sig<sup>g</sup> on the to 5. Dec. 1845.  
state the value of the paper or, his declaration is ill<sup>l</sup> for 304.  
or general circumstances but is aided by accident with 389.  
Because the jur<sup>o</sup>, having ascertained the same on 46.  
5. Nov.

res are presumed to have found the value, and thus the verdict supplies the omission. Born save this with the rule given by Lord Mansfield. That rule is founded on the presumption that the jurists who are aided by it were satisfied in the proof to the jury. Now in this case the jury have found some proof for the def, but in all common presumption they would not have found a sum as to any amount, unless they were proved. Again, if a party pleads the ground of an assumpsit, or other moral hereditament without averring it to be by deceit and the jury find the ground the verdict is in the verdict. For the deceit was in the 87 statement and not in the title. The ground is the material point: and the deceit is only the mode in which that ground is required to be made. But to apply the last rule — the deceit is implied from the fact which is found, namely, that there was a ground; for there can be no ground, except by deceit, nor can a ground be proved in any other way. The implication is therefore irresistible. And therefore found it to be by deceit, and thus by their verdict supplied what the pleading omitted.



Black v. White

Whenever the verdict leaves a doubt in the minds of the jury are presumed to have found the fact as stated.

But as the verdict does not clearly show what fact is proven to ascertain some evidence by which it may be determined when the jury are presumed to have found the fact which was omitted. The attainment of this principle, a key to the whole system of evidence in error.

After verdict the Court will presume all facts not alleged which are necessary in order from those which are alleged and found - to have been proved to the jury on trial.

Wash. 658

15th 145

16th 120

17th 127

18th 127

19th 127

In the words of the Court will presume, in support

of the verdict every thing which in point of fact is necessary

to warrant the finding upon this, it will be certain

as amounts to the same, as the last rule. But there

is still another view, in which, as better illustration of the principle the same rule may be given.

The Court after verdict will presume, in support of the verdict, every thing which it was necessary to prove in order to prove the case as found. For example, the fact

3 B.C. 394

Canth. 130 389

14th 130

5 B.C. 317

7 B.C. 518

4 B.C. 2455

in the case, must be found a very clear case in his declaration.

and the verdict is found for him, this leaves the case

for the jury having found the fact to have been committed

it follows, as a necessary consequence, that it must have

been proven to have been committed on some day - in

the Court will presume it to have been done before the next day

Has an a Reading

because evidence of its commission after that time  
would be inadmissible.

A common example given to illustrate this principle is where a segment is declared on, without overruns. It has occurred every year or so since I learned the

beaver will insure every an claim to have been made. Feb 4<sup>th</sup> 1891

at the trial because this is of the very essence of the  
matter so that the fact of a confession being made by the  
prisoner could not be proved without it. This is an opinion

Winnipeg, he is buried within the general rail - Co. 317.  
In. 1884.  
June 78.  
P. 62.

remark is applicable to another extreme of Commonwealth

Swamp under the river, & a good bottom, on a level  
of the flood side, without excessive settlement. For this  
is more easily implied.

On the other hand if the ground of an action is  
disputed it will be proved & determined without ques-  
tion unless asserted to be in error, and this is a direct

providing the same has been determined with re-  
spect to the place of residence. For those cases he need  
not be as a ground <sup>without record</sup> there need not be an expression of the

recommenced; but there occurred as a by-product in the  
luxury of vision, or a product of a recession without alteration.

Third and Pleasing

Now by an inspection of either of the three cases

5 Dec 17  
which have been given it will be perceived that the  
Hutton & Co. in counting on a grant of an advertisement  
2 Feb 176  
10 Feb 176 of an advertisement that it was by deed is aided by the

verdict for the facts claimed under the present. For  
the jury could not have found the grant unless they  
found it, on insupportable evidence, in any other way  
than by deed. Thus &c. Had the verdict been so  
reworded these facts which before did not appear.

On the other hand, nothing can be presumed in sup-  
port of the verdict except those facts which are alleged and  
found and such as are necessarily implied from them.  
Hence if the title or cause of action itself is alleged the  
deed cannot be aided. The Plaintiff is obliged to say

3 Jan 1768  
Hutton & Co. 558  
17 Feb 1768  
that the deed is true. He says that the grant was made a  
verdict is found for the deed when the evidence is to the  
effect that the deed was made and the consideration for the deed  
can be presumed from it which would make the deed  
actionable. Neither can it be inferred that the defendant  
has a right of property in the other words which are assu-  
able, he would then be charged or could have been moved.

Had this been a case in which there is no evidence  
of a right of action. It is further.

It may be said is omitted which is essential to a right  
of action and not implied from facts which are alleged  
and found, the deed is not proved by verdict for  
the principle on which, facts are ever proved in a verdict.

Wheat and Wheat

cannot now be established. Since by the declaration the  
fact omitted is not imputable, from those which are  
found. Thus suppose, in Loosewood between the 1st & 2d. 1845.  
does not even performance of a condition, precedent 7 B.R. 125  
or his part - would the declaration be aided, in the case, 2 B.R. 472  
aid? supply the omission. It had also the very line & 2d. 1845.  
That the deft, on condition that he should deliver, first per (Ante 13 a note)  
from certain specifications on his part, promised to perform  
and that he has not paid. But they do not find that  
the deft has performed on his part nor can such per-  
formance be implied from their verdict. It does not appear  
therefore that the deft was liable, and the declara-  
tion is not aided by the verdict. I suppose an action had  
against the deft. for money due by his debt, without  
any condition precedent. From the language of the verdict  
the deft is not liable unless he knew that his assign-  
ment was intended to defraud - and this knowledge can-  
not be inferred from the finding of the jury on the  
issue tendered by the declaration. The deft is not  
therefore aided by the verdict and judgment will be  
entered.

Again if the deft in an action against the mortgagee  
of a bill of exchange omits to allege notice, the verdict 2d. 1845.  
is not correct as a verdict in his favor, for then in the  
indorsement and assignment, as made - are found as he was  
not the obligated presumption is explained, that the deft  
had notice.

And



## Pleas and Pleading

and it is important to be observed that the Court do not presume some material fact omitted in the pleading merely because that fact is necessary in support of the case. For that would be to suppose that the jury are competent judges of the law, and on this supposition every case would be covered by verdict. Thus suppose in Spencer v. The City of London the promise alleges no consideration, and on motion a judgment is obtained, a verdict. This does not in point of fact, involve the necessity of a consideration, though it is true, that if there is no consideration, there is no promise, which the law will enforce. In point of fact, there must be a promise without a consideration, and to this only the first rule of the two extends.

*Booth v. The City of London.*

There was indeed a case in Booth v. The City of London contrary to this, but that decision was clearly not law. The doctrine of motions in arrest, was at that time ill understood in our Courts. The example given of an attempt to state performance of a condition preceded well illustrated the same principle.

*Booth v. The City of London.*

2d. 9th

1st. 10th

Question in arrest of judgment may be made, after a verdict. It then operates only to set aside the verdict, and nothing is decided, which would not be in several circumstances. For no verdict has ever been given nor any judgment entered. It leaves us substantially where we were, before we pronounced the law. Only, that is all. It is necessary, however, to observe that in some cases

I had understood that the  
 judgment will not be arrested, for the greatest pos-  
 sible defects even there is within it is ascertained by verdict.  
 This is true, where the first radical fault is in the prin-  
 ciples of the party machine in words. For why should  
 it be allowed to arrest, I understand where the other books  
 are afterwards arrested, &c. & arrested him. This is a con-  
 sequence of the general rule that judgment is based on  
 the whole record, and even if one in time as well as  
 time is correct in occurrence, both, both, since it is  
 before the first radical defect. It follows, that if the  
 verdict is in favor of that party who on the whole record  
 is entitled to it, he shall have judgment, & however faulty, on  
 his part even be the particular place on which the issue  
 was taken. For example, the declaration is manifestly  
 defective & pleads a frivolous plea in bar. Issue is taken  
 and, and for the verdict the jury cannot arrest the judg-  
 ment, for though the plea contained no defense it  
 would be too late to arrest the judgment  
 on motion, the jury since on the whole record the defendant  
 is entitled to it.

On the other hand suppose the secular is good, the  
idea previous, and the replication more official. Jan 4. 1850. Feb. 16.  
Since prices a correct is, but, for the gift, the day 23 Dec. 244  
cannot accept the previous, for the, but, accepted was  
in his own place.

When judgment in performance of a verdict is a virtue  
a judgment in dismiss the party for whom the verdict

# Third and Fourth

and second, and in some cases be reversed.

It is then, decided in not always entirely in favor of the other party. And if it is found in favor of the party found against, on the whole, reversed to be entitled to judgment he must have of the necessary testimony to present a case distinct from that which was last considered. Then the party who has a verdict in his favor reversed judgment against the other.

<sup>7</sup> But here, the party against whom a verdict has been

8. 10. 20. 133.

9. 10. 20. 133. found obtains the judgment. For ex: The declaration

is insufficient. The plea is bar frivolous, on which issue is taken and found for the plaintiff. The Court will not only, arrest the judgment in favor of the plaintiff, but will enter it up for the defendant. It would be nonsense for them to award a replicator, in this case, for the defendant could take issue on the declaration and to enable the plaintiff to recover. In a case, if the declaration is good, plea in bar bad; and replication good or bad, if the issue is found for the defendant judgment shall be arrested, and reversed for the plaintiff.

If the issue is taken on an immaterial point, (and this is a very common proceeding) arresting judgment. Then must regularly be a replicator awarded.

Thus where a traverser, takes up what is material, on the other side, puts in plea which is not so, the Court will generally after arrest, enter the judgment and award a replicator, for the issue being immaterial, the plaintiff





## Head and Pleasing:

under the plff, leaving what is material to the case

Am. 65, 255

Lam. 175-6

Ill. 787

1. B. 301, 305

3. B. 595

2. B. 190

Am. 894

that which is immaterial, and is not a part of the case, and I will be satisfied to award a repleader and order for the verdict to be set aside.

Suppose in an action a married husband sues wife for a trespass committed by her while sole, the wife pleads that they are not single and the jury find that

Am. 85

Lam. 76

they are not single must be arrested and a repleader awarded for the issue was immaterial.

But suppose the plea in bar is wholly insufficient and the plff traverses a part of the whole and obtains a verdict, no repleader would be awarded, (nor indeed would judgment be arrested) according to the rule just now given, because

Am. 301

8. B. 123-6

33

Am. 230

no manner of plea of issue could have awarded the plff. It would have been answered, no, where all is awarded a repleader. It will be perceived that the plff in the case does not leave a material part of the matter to be tried on immaterial issues.

A Repleader is awarded to give the parties another opportunity of pleading over again. Thus suppose the plea in bar is sufficient and the plff traverses an immaterial part and a repleader is awarded to enable him to take a new traverse, to a part which is material. The proceedings begin de novo at that stage and no other intervention from the rules of pleading occurs.

If a plea of immateriality of the issue is never awarded

Am. 595

Am. 2

Lam. 5-6

173, 216

Lam. 510

Plaintiff and Defendant

awarded, it seems, in favor of the party who tendered  
the issue if the verdict is against him. He must take  
the consequences of his own error. If the verdict is  
in his favor, the other party must have a repleader.  
Doubt 180.  
1st Cause 313  
2d Cause 317.  
Doubt 311.  
1st Cause 314.

It has been observed that judgment may be awarded  
for an immaterial issue. That an issue may be immaterial and decisive if framed one way, where it would  
be immaterial, if framed the other way. Thus if in need I  
could payable on or before a particular day, the right  
place judgment before that day if the verdict is for  
for him, it would operate to decide in favor of plaintiff.  
But the issue would be immaterial and a repleader  
awarded.  
2 Nov. 1840.  
2 Feb. 178.  
3 Feb. 1845.

Repleader can only be awarded after an issue  
is framed and never after a verdict. For say the both  
the parties have already put themselves on the judgment  
of the Court. But the true reason in my opinion is  
this— That an issue in law, since it reaches back, throws  
the whole record, cannot possibly be immaterial or in-  
decisive. Whether a particular fact stated, is true or not  
may be perfectly indifferent. But on a verdict the  
Court are to determine from the pleadings, on record  
who is entitled to judgment.

If a repleader is awarded when it ought to be awarded it is  
a verdict when it ought to be awarded it is error—as the  
judgment is erroneous.  
Feb. 179  
6 Nov. 2  
1st Cause 317  
1st Cause 314

There can be no repleader after a default or discontinuance.  
Doubt 322.  
Feb. 179  
6 Nov. 3.

18  
Hear our Pleaings

In the case of defect, the reason is, that the off was not  
with the replacer, and the defect is not sufficient to show  
he either had not bled at all or he had abandoned his  
defence. After a recontinuance the facts are now coming  
out of Court, and in neither case, is there any issue on which  
judgement is required.

A replacer is awarded in those cases only, where the off  
is not known what judgement to render, on the issue.

At Common Law, it was sometimes awarded before trial,

1. Bac. 306. but since the Statute of Replevin, it is not, according to Statute.

3. Hale. 664.

6. Hed. 2. the trial. Because under those Statutes, many subjects are allowed.

Cart. 371.

Law. 579. or if awarded, and the Court will not, generally, determine

Ch. 164.

whether it will be awarded, and what will not.

However, when the defect is clearly incurable, the Court  
may sometimes award a replacer before trial.

A replacer is never awarded on writ of error, for in

2. Shum. 319

2. Lev. 12. that case, final judgement has already been rendered, and

6. H. 102

the object of a replacer is to lay the foundation for a final  
judgement.

It is to be observed from what has been said that replacer  
is awarded for some defects in the issue, though the

verdict is right and follows the issue.

5. H. 270.

Ex. 112.

Law. 579.

Fin. 444.

On the other hand, where the issue is right, judgement may  
be awarded for defects in the verdict. In this case the Court

will award a verdict or verdict.

In case of a special verdict the Jury find only the verdict  
of a verdict fact, and not the fact itself, judgement will

## Heard and Hearing

be arrested and a verdict as was rendered. <sup>10. 53. 50-7</sup> <sup>1243.</sup> <sup>39. 40. 594.</sup> <sup>1. 50. 115.</sup>  
some presume nothing on a verdict ex dicto, <sup>10. 53. 50-7</sup>  
is not their province, but exclusively that of the law  
to infer facts from matters of evidence. Thus if in Traverse  
the jury should find that the property was bailed to  
the defendant on demand or used to release it. <sup>10. 53. 50-7</sup>  
a refusal on demand is not of itself a confession, but  
some evidence of that fact. The law cannot therefore  
on this verdict give judgment as for a confession,  
but must award a verdict ex dicto.

If however the substance or material part of the issue <sup>30. 22.</sup>  
is found, the verdict will be sufficient, though <sup>1. 50. 115.</sup>  
an immaterial part is omitted.

If the verdict varies materially from the issue, it  
is ill and judgment will be arrested: so, if the  
jury instead of giving a verdict on the issue present  
ed, find something foreign to it. Thus suppose in <sup>2. 40. 31.</sup>  
an action against an executor, on a plea that the <sup>3. 40. 71, 72.</sup>  
testator did not aspense and provision, the jury find <sup>5. 40. 59.</sup>  
that the defendant did not do. That was wholly out of the  
question, and judgment will be arrested.

In all those cases, where the defect is in the verdict  
and not in the issue, a verdict ex dicto and a  
repleader, must be awarded.

<sup>10.</sup> Verdict ex dicto which finds the issue, and more is not <sup>2. 40. 31.</sup>  
vitiated by the surplusage — ut per maxwell <sup>6. 40. 57.</sup> <sup>3. 40. 71, 72.</sup>  
in habeas. Thus if in an action against an executor,



## Hears and Hearsay

the question is, whether he had a pet, and the jury find that he had a pet in his head. The evidence is good enough.

If the jury after finding a fact specially make a conclusion of their own, the Court are not bound by that conclusion, they will give judgment without any reference to it, on the facts found. So, if on a question of title, the jury find a lease to S. P. and "that S. P." was seized in fee, the C. P. would disregard the conclusion and give judgment on the lease.

If in a civil action, there are two counts, one of which is good and the other bad, and the jury find a general verdict and entire damages judgment will be awarded and we give all names awarded. For on the Bench which is if the plff had no right to a verdict and the Court does not know how much damages were given on each count or whether all were not given on the bad one: we send this be ascertained in enquiry of the jury, for the summation of the judgment is the record. Self. Thus if in Heard the plff has two counts, one charging the debt with calling him a thief and the other - a fool, and obtains a verdict with entire damages, the rule is ad dupes.

And where there are two counts one of which is good and the other bad the introduction will be sufficient on either. For, if the plff has given a verdict that some count is good and the other is bad, the Court will give judgment on the good count and disregard the bad one. But if the plff has given a verdict that some count is good and the other is bad, the Court will give judgment on the good count and disregard the bad one.



Mass and Hallowell  
of a motion in committee.

They in Committee <sup>for some improper conduct in the House</sup> and then should  
ask the opinion of some persons relative to the conduct  
which they ought to take, or should refer the decision  
to a vote.

It also would be necessary to be notified in regard  
of the parties towards the party in the business or language  
with them in any way. It is suggested that in some  
cases influence should be got as well as some other  
cases where.

Some of the persons and interests, as a law in the  
relating to the preceding party, as it was a principal  
challenge, or was so nearly related to the fact of the  
existing facts, as to render them in some extent a party to some  
of the interests in the case.

Some also, the fact that a person has been taken as a  
debtor, or an attorney, or has given in a case to  
the same cause, is a very common case in the  
court.

There is a general rule that unless a person is a  
party of the case, he has no relation with the matter, and  
cannot be a party to it. In some cases, it is held, a person can  
be an agent of another.

That in the other cases, and in some cases, it is held, that  
no presumption of interest (as of the case) is to be  
drawn from the fact, that a person has been taken as a  
debtor, or an attorney, or has given in a case to the same cause.

What is the meaning

237

and as the materiality does so to the materiality <sup>to 232.</sup>  
of the error, yet if the party knew of it in season and made <sup>to 166.</sup>  
no objection to him he cannot avow the judgment. On  
principles of policy, the law assumes that he has waived  
his rights.

Hence if one of the jurors has before tried the cause  
in the Court below, though rendered incompetent by that <sup>from another</sup>  
the party cannot object to him after verdict, as he is pre-  
sumed to have known the fact, as the words of the law  
more than ascertain the names of the jurors.

A previous opinion declared by a juror on a point  
of law which is involved in the case, is no cause <sup>to 420.</sup>  
of challenge, or arrest of judgment. And even if  
he understood the terms of it had formed some opi-  
ion on a point of law.

And it was determined many years ago by our  
Superior Court, that a previous opinion on the merits  
of the case expressed by a juror, is at times deemed  
not to have influenced the verdict, is no ground  
for arrest of the judgment. <sup>to 232.</sup> If the verdict was cor. <sup>to 62.</sup>  
trary to the opinion expressed, I think the rule a good  
one - otherwise, it may be dangerous in its opera-  
tion. It is usual to inquire in these cases, if for the Court  
to inquire of the jurors themselves.

On a motion in arrest, the Court can never <sup>to 232.</sup>  
the evidence, as to both the verdict and point. Both  
this has been no concern. A motion in arrest <sup>to 232.</sup>  
for



Ward and Reading

Ward, 6187.  
192, 273, 277.  
2 Feb. 269.

Therefore it stands that the jury have found a verdict against verisimilitude, is bad.

2. W. 264. It is said by Swift that on account of inconsistency, or misbehaviour of the jury or the parties, a retrial is awarded. This is certainly not law. A retrial is not given.

Now in England, notwithstanding the rule that judgments are awarded for intrinsic causes only, it is certainly true, that in general it may be awarded for the same causes as in Court, for causes not appearing principally on the record, either in the pleadings or in the verdict, or for misbehaviour of the jury or of the parties.

The fact which constitutes the objection, is then entered on the postea, by the judge who takes the verdict, and thus it becomes a part of the Record. In Court, such causes are presented by motion in written or oral form and evidence by the Court. In Court the judge goes into the evidence, and if convinced of the truth of the just stated entry it is on the record. In Court it is entered on the record by the finding of the Court. The English practice, on the whole, is rather more loose than ours.

Ward, 291.  
Brown, 79.

Of two cases however, in which the English Court have adopted our practice precisely.

The more usual course, both in England and in Court is to obtain a new trial, in these cases.

Plaint and Pleading.

32

In arrest of judgment, for any error in pleading, as Lalk. 579.  
costs are regularly allowed on either side, for the error. 2. Part 196.  
by arresting judgment might have recovered costs too. 1. P.R. 267.  
veritas in litem, the trouble and expense of a trial. 1. Part 197.  
Also, if a motion in arrest is successful and the party  
partly moving, brings error and fraud, he does Comp 407  
not recover his cost below — and he never recovers  
costs in error.

This rule as to the nonallowance of costs does not ap-  
ply where judgment is arrested for extrinsic causes, be-  
fore the reason ceases. In such cases a venire de no-  
re is awarded and expenses. The whole costs follow  
the final event. The party moving in arrest could  
not have taken an earlier advantage. 1. Part 197.

As to the rule concerning costs, laid in Count  
(of the former practice is still considered correct as far  
as this in fact is tried by the Court, for under this  
defect in pleading might be determined and decided  
in summary. But if as I conceive, the practice  
was overruled in a late decision of the Supreme Court,  
the law respecting costs must follow the decision.

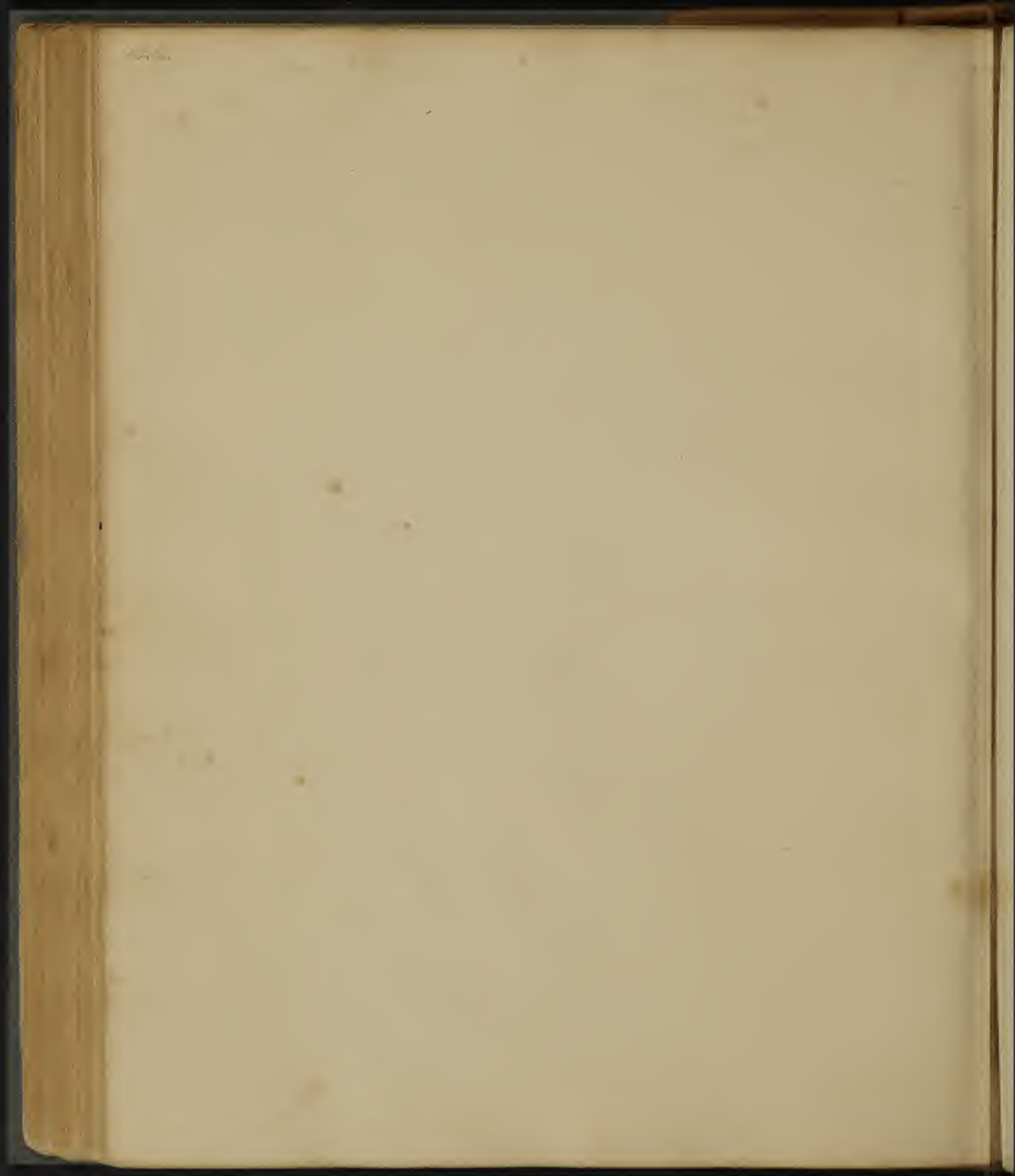
In England motions in arrest were made within  
the first term of the next term, after the trial. 1. Part 198.  
In Connecticut, they are usually made on the accept-  
ance of the verdict by the Court if the cause is then ready,  
and must be reduced to writing within 24 hours,  
exclusive of Sundays, and indorsed before the end  
of the term. 1. Part 199.

Plaintiff vs. Defendant

of the term whether 24 hours have elapsed or not  
 3. 18. 2. 1871. For the form of a motion in arrest see D. P. Com. 27. 11.















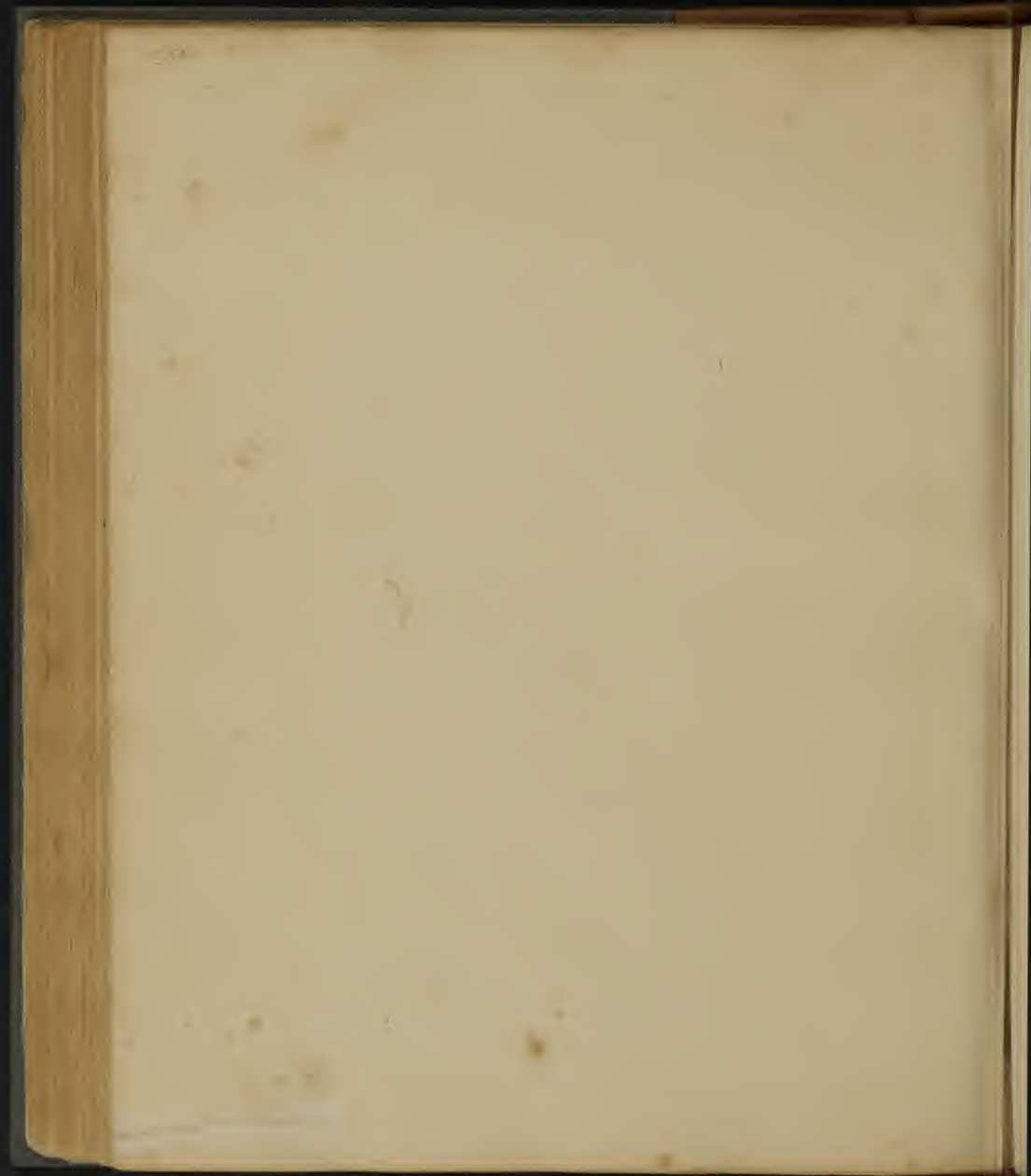


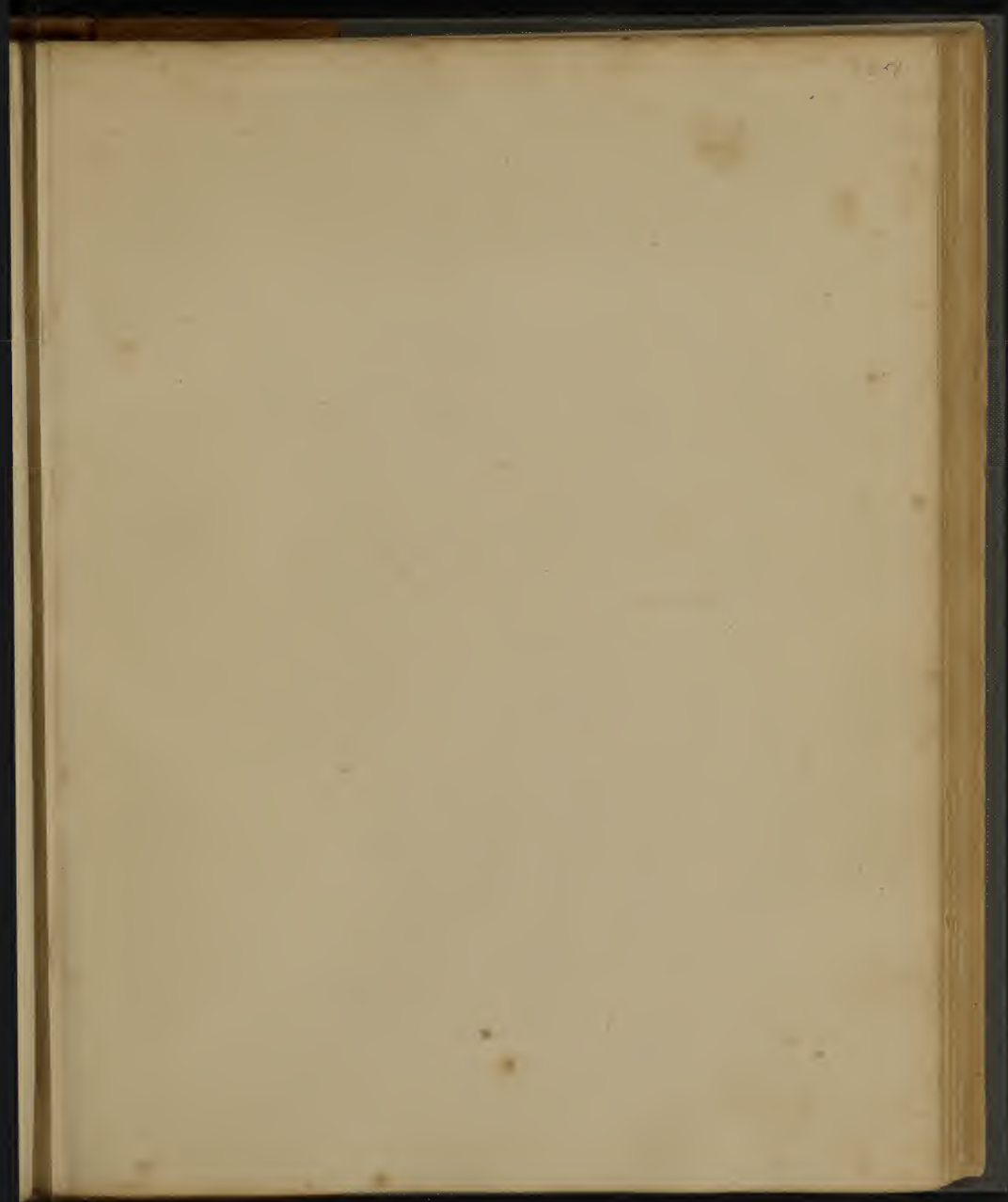














Vers. Trunks.

The principle of a new trial by the Court merely goes to the party, the principle of traverse has come a passim.  
It determines nothing with regard to the eventual rights of the parties.

This proceeding was unknown to the common law as it essentially stood. It had however, within the period of 100 years, without the intervention of any statute, grown up, by the decision of the Courts, to an important and very interesting part of our system. And as they were first allowed at a time when the principle of Equity were well understood, the notion of new trials is unaccompanied with the technical niceties of the law but governed by the rules of Equity, so far as they differ from the rules of law.

It is now holden to be incident to all Courts of general jurisdiction to grant new trials. Courts of Equity, or Courts whose jurisdiction is only limited, to a certain sum, below which, they can have no separate always, have the power of granting new trials as for example, the Courts of Com. Pleas in Common & But Courts of inferior original jurisdiction, as single magistrates, have not this power.

Both in England and in America, on application for a New Trial is, according to the general rule, an appeal to the discretion of the Court. This however must not be understood to be an arbitrary discretion for the Courts



3. W. 392.  
Lack 648.

## New Trials.

are admitted, because the rules which have been established on this subject, are not uniform. They exercise a discretion upon what terms they will grant a new trial, as for example the discovery of evidence facts inconsistent with the admission of facts not intended to be litigated, the production of books, papers or in fact the examination of witnesses, in time, or in a new trial. To show a new trial is applied for on the ground of the misbalance of the party as in not having a great many which would have been important on the former trial, the Court will compel him to pay the cost of the first trial, so that the other shall not suffer by his mistake. It may be that the party in whose favor the case was determined, had obtained execution and levied on the property or person of his adversary before the application for new trial is made. Now the Court in this case will require the party to whom it is granted, to give security that the other shall be satisfied, if judgment again goes against him. Since he obtains a new trial all the proceedings on the old are set aside if no restrictions were annexed, or no security required, the recoverer in the former trial might lose his remedy. The object of a new trial is to do justice between the parties. You are not therefore to be precise to either.

It is not certain, that the Court will always grant a new trial because the verdict of the jury was contrary.

## New Trials.

contrary to law or evidence. For example, if the  
 Court are of opinion that substantial justice has  
 been done, they will not, in these cases grant a new  
 trial. For example, the def<sup>t</sup> heard the <sup>1. 304 2.</sup> 1. 304 2.  
 to submit him a verdict and the jury returned the <sup>2. 304 4.</sup> 2. 304 4.  
 verdict found him not guilty, when the <sup>3. 304 391.</sup> 3. 304 391.  
 submitted to some damages, the Court would not grant  
 a new trial, for justice was really been done. So where

the Court, to accommodate a particular case, orders  
 a new trial in a case where the Court of Appeals  
 brought in an action of trespass against him, on a ver-  
 dict of not guilty against law and evidence, the  
 Court refused to grant a new trial because in their opi-  
 ion, the damages which one had to have been seven  
 so low, that it would answer no valuable purpose.

The effect of a New trial is not only to introduce  
 the same cause again into Court, but to introduce  
 it anew. Even time is done away, as if it except  
 the writ and service, and the defendant make what  
 defence he pleases, as if no proceedings have ever  
 been had. If the party who recovered in the first tri-  
 al have devoted execution on the property of the other  
 and received the money, on granting a new trial  
 there is then, no judgment to support that levy. The  
 other party will have, therefore a right to recover back  
 the money. But the Court will always require of him  
 to give security, for the debt, should the other obtain judgment.

New Trials.

To it land has been <sup>left off</sup> ~~paid~~ as the former execution.  
The Board will very often make a consultation in  
practising a new trial, that the party applying will  
convoy the land on receiving the money himself, to  
the bona fide purchaser.

And notwithstanding the new trial - except in cases of the proceeding, to either with the inclosure, yet from a principle of public policy, personal property, which had been taken on execution, must satisfy the judgment never be recovered specifically against the bona

3. M. 392. *pele* *per* *chawor*, *me* *in* *celor* *can* *am* *in* *celor* *de* *meu*.  
1. *Sal* 648.

himself a serious sin. For to allow this would dis-  
courage purchasers, from buying imports at the port,  
and prevent the goods from selling for their worth  
and the party from raising money on his exportation,  
This is regarded by several policies, without any reference  
to the particular equity between the purchaser and the  
party.

There are certain cases, where the Court will not grant a New Trial though the verdict is contrary to fact. If justice has been done and there is no equity on the part of the person applying they will not interfere. 2. If it would minister malice to the passions of men, and answer no valuable purpose, a new trial will not be granted.

3. Where the party applying could have saved his cause if he had made use of the common defence which on principles of policy the Court allow, but which is contrary to justice, as if he had pleaded the Statute of Limitations, the Court will not grant him another opportunity.

4. Where if the former decision had been otherwise, Jurors have operated merely as a punishment of the party, the Court will not grant a new trial to expose him to punishment a second time, as if on a public prosecution for an offence, the prosecutor has failed to convict the defendant. It will not suffer him again to be jeopardized however plausible may be the reasons for the application. This rule is founded in humanity, and applies to all prosecutions, be enforcing the law through in the shape of a civil action for a penalty. These cases in which the Court refuse to grant New Trials will be more particularly noticed hereafter.

Having noticed the various cases of New Trials I will now mention the causes for which they will be granted.



## New Trials.

1. One cause for granting a new trial is that the jury on the former trial have given a verdict on a misapprehension in point in point of law, or generally a pecuniary law. The facts are here all agreed to be correctly found. And

2 Wils. 309.

1 Salk. 848.

4 F.R. 470.

1 St. 425.

2 B.L.R. 1178.

Term. 402.

4 Wils. 347.

I must be clear that the law arises from those facts has been mistaken by the jury. For example, a deed conveying lands of which the grantor is not in possession, & a stranger, is void. A being one of Josephine, coming Blackacre to C, who being a widow & dependent on him, she was in possession and obtained a verdict. The Court will grant a new trial to the party aggrieved, for the deed under which C claims title, is to all intents and purposes void. No new trial in this case had been had in Conn.

5 Bac. 246-7.

4 Wils. 293.

4 F.R. 758.

2 St. 5.

5 St. 425.

and it is not granted in Eng. where the case is a hard one, or where justice has been done or impro.

2. A second cause for granting a new trial is that the verdict was against evidence. But the Court are very tender of disturbing new trials on this point, for it is almost the exclusive province of the jury to judge of the weight of testimony. There is some difficulty in drawing a rule from the cases on this point, however, I will attempt it. Now the Court will not grant a new trial because a greater number of witnesses are on the part of the person who was defeated. For the jury must believe them, or they must have believed all on their personhood than on that of the others.

2 Bosc. 584.

Mol. N.P. 327.

3 Wils. 392.

2 St. 1100.

If the Court do not perceive any evidence or if it is so

As I hope that they cannot account for the failure of  
the jury, they will grant a new trial. If the cases  
be circumstantial, that the verdict can only be ac-  
counted for on the ground of partiality, or extreme  
prejudice of the jury, a new trial will be granted.

1. Sanction, it is now seldom that new trials are granted  
 set for this cause. { But Mr. J. <sup>seems</sup> now to be the opinion  
 in that the Bd would to grant a new trial, if in the opin-  
 ion of the Judge, the verdict is clearly against the weight of the  
 evidence } 5800 247  
univ. of Cal. 327

3. A third ground for a New Trial is when the  
damages are excessive. I have received all the cases  
in the book on this point, and have found 120 ap-  
plications for new trials, on the ground of excessive  
damages, only three of which were granted. See  
Form, there has been but one. This proves that new  
trials are seldom granted for this cause. There are  
a number of cases shown cases in Wilson which were  
out of the controversy between the Ministry and Wilkes.  
where several applications were made on this ground  
and refused. There were cases of false imprisonment  
under a general warrant from Lord Halifax. In one  
of the three cases, in which New Trials have been granted  
for excessive damages, there was strong evidence of par-  
tiality in the jury. The case in Wilson before referred to, Page 206  
to the Chief Justice (Lord Camden) observed that it would  
be dangerous for the Justice to interfere with the jury's

# Verdicts

2 R. 1. 206. he holds it must be a solemn case is used, judges  
 "pious clamor" in a trial, and which all mankind at  
 Talk. 644. first shall must think so to induce a court to grant  
 2 W. 405. the case is so that the court is bound to grant  
 Tra. 97-2. a new trial for excessive damages." The cases here refer  
 5 R. 557. not to see how wide the damages are uncertain  
 1 Bur. 509. and not in the opinion of the jury. It is an action  
 4 R. 557. on a contract, where there is a standard as on a  
 Conf. 231. note now, as the jury make a mistake in the compu  
 5 Com. 155. tion and give more than is really due, the court will  
 5 R. 113. 123. grant a new trial unless the jury will release the ex  
 6 R. 23. ception— then they will not.  
 13 R. 11. 11. A new trial has been granted in Connecticut, where  
 13 R. 11. 11. the jury in both cases took judgment by default, for too much.  
 13 R. 11. 11. Supposing a default is only an admission that something  
 13 R. 11. 11. is due, unless the action is brought on a written security  
 13 R. 11. 11. A new trial has been granted in the case of excessive  
 13 R. 11. 11. damages in case of default and default.  
 13 R. 11. 11. There is no case in which it has been granted, in case of  
 13 R. 11. 11. default, for excessive damages only. It is said by 2 Tham.  
 13 R. 11. 11. Let that be granted in any case. There, whether  
 13 R. 11. 11. it is granted unless there is some standard to measure  
 13 R. 11. 11. the just damages. 3 Quia.

4. The damages of the damages from the damages  
 5. There is no other source for a new trial. That this provision is said  
 6. The provision is only in actions on contract, as on promises  
 7. There is no other source for a new trial. That this provision is said  
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 98. The provision is only in actions on contract, as on promises  
 99. There is no other source for a new trial. That this provision is said  
 100. The provision is only in actions on contract, as on promises



case where in actions on tests, a new trial has been granted for this cause: And the general rule seems to be against it. It is said that there is no reason why a new trial should not be granted, for smallness of damages in case of tests.

2. Bann.  
254  
14. Gen. 2.

The rule of not granting a new trial for smallness of damages does not hold, where the jury have made the damages small, through a mistake in point of law, nor where the plf is deprived of just damages by some unfairness on trial.

St. 125.  
1058.  
Litt. 647.

5. Another cause for granting a new trial, is the mistake of the counsel in pleading a wrong plea, by which the party was prevented from availing himself of his real defence. The party applying must state not only what he has pleaded, but that what he would avail himself of, could not have been given in evidence under a former plea. The Court in granting a new trial do not determine that he will succeed in his defence, but they will <sup>require</sup> some testimony to be introduced to show that the demand is reasonable and that it is not all a false pretence. Suppose for example, in an action on a note, the defendant, full payment, and offers to show in evidence that the plf accepted a horse in satisfaction - the testimony is inadmissible to support his plea. It should have been pleaded by way of defence and verdict. If there has been no misconduct, but a mere mistake in pleading the Ct will in such case, grant a new trial.

3. Burr. 1385.  
2. P. K. 134.  
6. M. D. 222.  
10. M. D. 225.  
1. Salk. 343.  
5. Bacc. 251.

1. Road. 5, 3  
2. Salk. 271.

6. M. D. 22, 222.  
Litt. 645.



## New Trials

There is one case under this head, in which there seems to be some difficulty. The def<sup>t</sup> to an action of sed. pac. for example, has pleaded a justificatory plea, and failed and now applies for a new trial that she may take advantage of a denial under the plea of not guilty. What shall he state to the C<sup>t</sup>? it is a difficult thing to prove a negative - He has only to state that he is not guilty -

Rad. Cont.  
28

And it has been said that he has admitted it, in his former plea. I would know and this would have been a good rule to establish at first: but there certainly are cases in which it seems reasonable that he should have a new trial.

In Count there is a Statute allowing the j<sup>ly</sup> in an action for a secret assault to be admitted to his oath on the ground that no witness were left to an action on this Statute. The def<sup>t</sup> pleads that a certain man was by, and so on the affray, j<sup>ly</sup> replied that he had removed himself in fear, and on demurrer, the replication was advised sufficient. On application the Court granted the def<sup>t</sup> a new trial, for mispleading. In many cases where demurrers are overruled, the Court will grant a new trial, if it appears that a frivolous demurrer was not put in for the purpose of delay, and that the party applying, really has another good defence -

2 S. R. 131.

3 Ed. 2. 137. 222.

How far is more surprise, or mistake, otherwise than in pleading a ground for a new trial. & see margin.

A fifth cause for granting a new trial is newly discovered testimony. This is a very common ground, but the new trial is not granted of course. If it were, it would open the door to collusion and carelessness.

If the party applying or could be using due diligence have had this newly discovered testimony, the Court will not grant a new trial. If the failure to produce it arose from the party's own negligence or carelessness, it is regarded in the same light, as if he a careless witness of the testimony and would not produce it. This is not because it would be inequitable between the parties, but public policy requires it. The cases on this point are not very numerous. In this country the time limited for making the application, is generally so short, that but few new trials are granted for this cause. In Conn. the time limited is three years. In Calaveras, there is no limitation in Cal.

From a principle of policy, to prevent fraud and a new trial will not be granted because the witness forgot a material part of his testimony. It would be dangerous to adopt such a principle. So is never, one case in our Reports where a new trial was granted because the witness was so much intimidated that he said not the any law. But that was very once last.

In a motion for New trial for this cause, the applicant must state that he has read the testimony which he now wishes to introduce on the former trial, that he had never discovered it, and that in his opinion it is material. He must

# New Trials

then state who the witness is, and what he will testify. If the statement is such that the Court believe that it would make no subtraction in the case they will dismiss the motion. But if in the opinion of the Court the evidence is material, still they will not grant a new trial until the witness himself comes before them, and makes oath of it. The testimony now given at the former trial is not regularly read over again on the application. Sometimes it must be to enable the Court to determine whether the new evidence is material or not. But if either of the judges who did decide the former trial are present the evidence is taken from their minutes, and then neither party is supposed to contradict. The Court & the recovery of new evidence is made a ground for New Trials by Statute, and is a very common ground.

Tab. C. 28.  
1. Inst. 89.  
Hib. 283.  
N. W. 270.

1. If a person were to plant a new trial in the want of due notice to the defendant or on other words that through the intervention of some accident or fraud, or in some way has been obtained against a man, without giving him an opportunity to contest it. The officer, for example may have made a false return, intentionally, or through mistake so that the real defendant has never been served with process. Or he may have been actually served with process, and yet methods taken to prevent his knowing it, as where the writ was left in such a situation, that the little postscript is out of the door. To where process has been returned against a party who lives out of the State, the first term, a new trial will be

1. Salk. 668.  
2. 2. 428.  
3. H. 391.  
2. Lev. 140.  
1. 144. 325.  
H. 327.

instructed. Suppose in a case where the law requires 12 days notice the officer had returned a 12 day notice, when in fact process was served only 6 days. Before the opinion of the Court now there is nothing apparent on the record which shows the judgment to have been erroneous, so that the judgment be reversed, unless he could obtain a new trial. { But if the defendant appeared and defended. 5 Mar. 24.  
Feb. 846. and, this it seems, causes the defect of notice. Consider of parties can remove all other objections to the jurisdiction in itself. More which relate to the subject matter.

In the case of a writ of habeas corpus, the Court are not ipso facto left to their discretion so far as to refuse a new trial because justice has been done. For there has been a trial and the defendant has an unqualified right to be heard ad idem.

8 The eighth cause for a new trial, is some mistake  
defect, or misconduct, in the jury. - as if the jury, before  
 the decision to chance by casting lots for the verdict - or  
 if they have not the proper qualifications for jurors, not being  
 holders or n. Here the court, if the case does not come into  
 consideration - the question is that it has been tried  
 by a person who was not qualified to try it. - if the juror  
 or was too nearly related to one of the parties - or if he  
 was interested so far, that he had a case unbecomingly  
 circumstances, the Ct would grant a new trial, unless the  
 party applying knew of the interest or relationship, before  
 and did not challenge the juror. But where the man-

2. Bac. 245.  
 Mod. 54.  
 Vent. 30.  
 125.  
 1. 54.  
 2. 81, 189.  
 3. 12, 168.  
 Summ. 30.



## New Trials.

was totally disqualified from being a juror at all the previous knowledge of the party appearing will make no difference - A new trial must be granted.

The Court holds in arrived of Yac am & are concurrent with new trials in the last cases.

5. Dec. 259. If the jury are guilty of any corrupt practices, partiality,  
2. Jan. 140. negligence or if one of the jurors has been guilty of any  
3. Jan. 692. misconduct, or if he has so that the ill should never have  
5. Dec. 289-91. been so that the ill should never have  
2. Jan. 695. a verdict whatever evidence be adduced, a N. Trial would be granted.

5. Dec. 287. Perfect unanimity in the Jury is now required both in England and in Court - otherwise it is in disobedience and must be set aside. But an exception has been a separate both in England & in Court to evade the rigor of this rule - by for  
5. Dec. 251, 291. melting the minorities of the Jury to come in silent - i.e. with  
2. Jan. 14. out directly, directly or apertly - and they are not admitted  
3. Jan. 141. allowed to testify their dissent.

2. Jan. 1844. The Jury have no right to receive a witness after retiring.  
5. Dec. 288. If they do, their verdict is bad and a N. Trial will be granted.  
In England the Jury cannot take out any written evidence, without the consent of the parties or leave of the Court (now  
2. Feb. 714. in Court) But if the do so, and in form what evidence on both  
2. Jan. 141. sides, the verdict is good, otherwise not.

5. Dec. 235. If they take with them any written evidence which was not exhibited at the trial - the verdict is bad, and a N. Trial will be granted. The jury are not admitted to testify to their  
5. Dec. 235. misconduct - the verdict must be reversed alimane. In C. now is not concurrent with N. T. for this cause.

## New Trials.

9. I don't know for a New Trial is for some mistake Art. 57<sup>3</sup>  
in the opinion even by the Court. There is one of the most St. 753.  
fruitful sources of litigation in New Trials: 1. Rev. 305.  
and the Court St. 585, 115.  
are much divided the way of giving any opinion on a motion 5. Rev. 744.  
of law which influences them in their verdict. 5. Rev. 242.  
If they 7. Art. 57.  
have a admitted improper evidence, or excluded a fact 10. Art. 202.  
which would have been a verdict in. Rev. 1000.  
the party may file a bill of exceptions, and he need not  
not more than half of the motions in this State go up  
to the supreme Court on the promise. There are no bills, 5. Rev. 242.  
of Exception to be found in any of the modern Eng. Reports. 11. Art. 49.  
The practice was until lately, continued in the higher 5. R. 77.  
Courts in England and is now in use in the Courts of Massachusetts.  
pleas, concurred however with motions in New Trials.

It is not merely the charge to the jury, but any misdirection  
judgment, which may be made the ground  
alone of a motion for New Trials. It must be the opinion  
of the majority of the Court, and not an oblique opinion  
of a single judge.

In some cases New Trials have been granted in Eng. 1. Rev. 395.  
for misdirection, admission of improper evidence by the Rev. 535.  
whole Court. 1103.  
but this is not very common.

1. There will be no New Trial for misdirection, if justice has 2. R. 5.  
been done, on the whole.

11. A technical cause, is where the Court set have made  
a mistake (other than in hearing or weighing). The Court are  
involved in these cases unless there has been an error  
then, even though the case is an important one then will.

## New Trials.

not grant a new trial. This is from a misapprehension  
 of the rule were otherwise, it would induce carelessness  
 and negligence on the part of the profession. If  
 the lawyer has been guilty of breach of trust the Court  
 will leave the party to his remedy against him.

But where the Counsel have given false testimony which  
 was clearly irrelevant and ought not to have been ad-  
 mitted, by which the cause was lost, the Court will  
 generally indulge them with a new trial. The mind  
 of the most wise and lawyer, is sometimes so occupied  
 with other things that it does not accord to the plain-  
 est principles.

11. The absence of a material witness is material  
 accident, and the same accident, it may be, sometimes another  
 cause for a New Trial. But in England, a new trial will not  
 be granted for this cause unless the witness makes applica-  
 tion of what he knows, and that the Court may judge whether  
 it is material or not.

See. But it be granted in favor of a party by the Court,  
 if the request to be proved is immaterial, or if that  
 will not be postponed in such case.

In Connecticut, the petitioner must in this case state the  
 testimony which he has a right to expect the witness, must  
 state, on the basis of the merits of the petition, what he  
 knows.

So, if the allowance of a material witness is immaterial  
 he begins of the opposite party — as in arrest a material  
 will be granted.

5. Bos. 252.  
 11. Nov. 1.  
 6. Nov. 22.  
 1. Sept. 30.  
 1. Dec. 322.  
 1. Dec. 691.  
 1. Dec. 98.

1. Dec. 212.  
 1. Dec. 646.

1. Dec. 454.

5. Bos. 252.  
 11. Nov. 141.

But if a material witness is absent it will be necessary to bring him in by process, no new trial will be granted. <sup>5 Dec 252</sup>  
 to this because a verdict will be reached in the common law. <sup>17 Nov 208</sup>  
 If the rule were otherwise, it would open the door to surreptitious and fraud. If the witness did not come on a summons the party should have obtained a subpoena. <sup>Feb. 68</sup>

Where the witness has been kept away by the other party, it is not necessary in order to obtain a new trial, that he should be brought before the Court (as in case of accident &c.) to make affidavit of what he would testify.

A new trial will not be granted to the party, for the absence of a witness whose testimony he might have had. <sup>5 Dec 252</sup>  
 The rule is founded in policy. <sup>5 Dec 172</sup>  
<sup>Feb. 68</sup>  
<sup>Feb. 68</sup>  
<sup>2 Nov 22</sup>  
<sup>Dec. 6th 94</sup>

In Eng. a mistake made by a material witness is not a ground for a new trial. <sup>4 Dec 252</sup>

14. It is the ground for granting a new trial, that the case was lost on the former trial by the testimony of a witness who is grossly infamous. As if he had been convicted of the Crime of Perjury. But if of any other crime which directly attacks the integrity of the man as perjury, theft, perjury, and baratry. <sup>he. 5th 194</sup>  
 has done in the former trial, that it will be granted. <sup>Feb. 68</sup>  
 in England and there can certainly be no difference in this point between Courts of Equity and Courts of Law. The cases in which the principle has been discussed have become less in fact. <sup>2d. 13. 14</sup>  
 I have mixed, however in one case admission that <sup>Feb. 68</sup>  
<sup>5 Dec 252</sup>



You will

3 knew that Smith could be produced for that cause. And he would then stand on the ground that the party who signed the writ knew when the writ was sworn that it was infamous, and made no objection to its admission. And he laid the evidence and record of his conviction on his deposition — and therefore the decision was undoubtedly correct.

But suppose the evidence in which the case turned  
 Docs. 24. 184.  
 1. Bk. 63, on the former had come from a man - not Gossell  
 2. Bk. 13-19, impious - and of a bad character and reputation;  
 Ps. 69.  
 N. R. 298. which the party against whom he testified had no means  
 5. Bk. 252.  
 of discovering - would not this in many cases, furnish  
 a good reason for a New trial? I think it would. From  
 the manner of taking testimony by deposition, from per-  
 over at a distance, it may often happen that a most  
 material witness will be a man of low Character, and  
 yet the party against whom he is introduced will have  
 no opportunity of impeaching him. I once had a case  
 of this description in which the Court granted a new trial.  
 It is the only one, I have ever known.

13. Another ground for objection is a new trial is  
that the jury have found a general verdict when they  
were directed to find a special one, as the Court say, when  
the case was asked to turn on some question of  
law, and the jury were requested to find the facts se-  
curing that the Court might determine the law on them.

This is not illegal consent, for the jury are not bound to find specially. This decision is generally founded on the application of one party, or both, and if the case is as stated the opinion of the Court a new trial will be granted. There is a case in which a new trial in such case refused, but that was because it was of the trial at bar when new trials were, formerly, not easily obtained. 5 Dec 257.  
7 Nov 37.

14. Another cause for granting a new trial is the misconduct of the party in treating the jury — keep- 11 Nov 141.  
ing away the opposite parties witnesses or in this case it is totally immaterial whether the verdict is given with the opinion of the Court or not.

So, if a party solicits the jury to vote for him — or makes 5 Dec 252.  
any representations in favor of his own side or cause the 2 Feb 716.  
No. 452. verdict is for him, a new trial will be granted.

The same practices by the party's attorney will have the 5 Dec 252.  
same effect. As where the attorney writes to two jurors 2 Feb 716.  
the harshness of his client's case. So any kind of embarrassing 11 Nov 141.  
practices by the party or his counsel is good cause for a 1 Nov 125.  
new trial. 4 Nov 140.

Having thus pointed out the reasons based on which New Trials are granted I will now notice the particular cases in the books which seem to tend to their own decision, and are not contradicted in any of the several rules which have been given.

## New Trial.

One of the cases was this. The party demanded of his adversary, on the trial, to produce a writing, without having given him previous notice to produce it, and in consequence of his refusal, a new trial was granted. This at first appeared to me to be altogether incorrect for without previous notice, the law presumes that the party required to exhibit a writing had not it in his possession. But here the man acknowledged that he had the evidence and could produce it, if he would, but overruled his refusal on the want of notice.

The Court said that he obtained a recovery by local fi.

1. Burr. 352. rehe and therefore, granted a new trial.

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In the other case alluded to the defendant challenged that the obligation on which he was sued, was obtained from him fraudulently, his witnesses him to sign an instrument which he knew nothing about, or that it was a forgery. The counsel on the general issue have a right to make use of both these defenses; but on the trial they seemed to have lost sight of the first, and to have directed the whole drift of their evidence to show that it was a forgery. The jury overlooked the fraud entirely, and found that it was no forgery. A new trial was moved on the ground that it could clearly be proved to be a fraud, and granted.

I will now notice more particularly, the cases in which a new trial will not be granted.

## 2. New Trials.

There are some provisions laid down in the books on this subject which certainly are not correct. It had been said that the New Trial will not be granted after another. But this rule is now at an end. Subsequent to these decisions, it has been contended that a third new trial cannot be granted. But it is now settled that there is no limitation, so long as the reason remains, and I presume the Court would grant a New Trial as often as the jury should determine against law.

A general new trial is not available against the verdict in criminal cases; though in many cases, they are available in his favor. (C. P. R.) & but this is to be understood as applicable to the facts in the case: there are settled cases, the verdict is against law, judgment does not prevent an independent objection to a New Trial.

This doctrine applies not only to prosecutions for crimes, but to all cases in the matters of punishment though in form of more civil actions, for a penalty to enforce the observance of the laws: such as in cases where an error in law requires the writ to be awarded in vacation — or under the new provision the sale of spirituous liquors in small quantities, or the rule in all these cases proceeds on the ground that no one shall be twice reprimanded for the same offence. There is one case under this head,



New Trials.

of considerable magnitude which has never yet  
received a judicial decision. I allude to the case  
of usury. To an action on a bond, the def<sup>t</sup> pleads  
usury, and it is found not to be usurious. Can  
the def<sup>t</sup> have a new trial, to ask he can prove by  
the most irrefragable evidence, that the bond was  
usurious? I should think not. The Statute of Replevin  
operates as a bar to a new trial, the def<sup>t</sup> has endeavored  
to avail himself and failed. The reason why the  
def<sup>t</sup> in the plea of usury is enabled to defeat the whole  
claim of the pl<sup>f</sup> is not because the def<sup>t</sup> has a right  
to the debt — the most he can claim is the excess, above  
the legal interest. In the rest the operation is merely  
penal. Reasoning from analogy, then, we should  
conclude that where the operation is principally pen-  
al, the def<sup>t</sup> shall not avail himself of a successful op-  
portunity. If the Court should grant a new tri-  
al, in consequence that the def<sup>t</sup> should not tread  
over the right to more than the conventional in-  
terest, it would be correct.

New Trials are not usually granted in actions of  
1. B. 277. Traitor, but I have known a new trial granted  
1. B. 277. in one case of this sort. And many times, it would  
certainly be very reasonable.

o. B. 278. { Extraordinary proceedings, for offences higher than  
misdemeanors, in England new trials are practicable  
for

Verdicts.

for either party.

Where the offence is not higher than a misdemeanor <sup>P.R. 638.</sup>  
or, the Court may grant a new trial in favor of the <sup>2<sup>d</sup> R. 62.</sup>  
defendant. This may be done in case of a libel, and also of <sup>5<sup>th</sup> R. 102.</sup>  
perjury. <sup>5<sup>th</sup> R. 255.</sup>  
<sup>5<sup>th</sup> R. 269.</sup>

In Common Law, new trials are grantable in favor of the <sup>1<sup>st</sup> Nov. 587.</sup>  
delinquent even in cases of felony; but not in favor  
of the public.

But where the offence does not amount to a misde-  
meanor { and even where an action is brought to <sup>Rece.</sup>  
recover a penalty, under a penal Statute & the general <sup>3<sup>rd</sup> R. 451.</sup>  
rule is that no new trial can be granted against <sup>5<sup>th</sup> R. 80.</sup>  
the deft or delinquent. <sup>4<sup>th</sup> R. 752.</sup>  
5<sup>th</sup> R. 254. 1<sup>st</sup> R. 899. 1<sup>st</sup> R. 316.  
1<sup>st</sup> R. 253. 1<sup>st</sup> R. 101. 1<sup>st</sup> R. 238. 1<sup>st</sup> R. 154. 1<sup>st</sup> R. 124. 1<sup>st</sup> R. 63.  
2<sup>nd</sup> R. 484. 1<sup>st</sup> R. 257.

There are two exceptions to the last rule.

1. Where the deft has practiced fraud to obtain an <sup>1<sup>st</sup> R. 1238.</sup>  
acquittal. <sup>1<sup>st</sup> R. 93.</sup>

2. Where the acquittal is occasioned by the misad- <sup>5<sup>th</sup> R. 254.</sup>  
viction of the Judge in point of law. <sup>1<sup>st</sup> R. 216.</sup>

And in a quodam prosecution a Verdict cannot <sup>12<sup>th</sup> Nov. 9.</sup>  
be granted as to the civil part, unless it is <sup>1<sup>st</sup> R. 336.</sup>  
able and granted as to the criminal part. <sup>1<sup>st</sup> R. 154.</sup>  
<sup>1<sup>st</sup> R. 63.</sup>

Formerly it was held in England, that New <sup>5<sup>th</sup> R. 255.</sup>  
Trials were not grantable in actions of judgment, because <sup>1<sup>st</sup> R. 245.</sup>  
they are not conclusive, since a new action may be brought <sup>1<sup>st</sup> R. 248.</sup>  
The action of judgment in England was founded on a <sup>1<sup>st</sup> R. 1106.</sup>

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a more fiction. If the claimant makes a lease to Mr. Case claim, who binds the action against the tenant, if he is dead, I may then make another lease to Mr. Case claim and have a second action in his name. In this way the parties frequently do so, until a Court of Chancery is obliged to interfere and stop them.

The rule never applies in Court. Here the action is final like other.

5 B.C. 2534.  
6 Bann. 323.  
4 Bann. 2224.  
1 F.R. 225.  
1 B.C. 648.  
2 Bann. 1105.

In England, the rule now is that New Trials are not readily to be granted in these actions, as in others, if the verdict is for the plff, though it is otherwise, when the verdict is for the deft "except" for very particular reasons. When the verdict is for the plff, it changes the possession - occurs when for the deft.

Again I send to an A. C. for a patent and a battery, to which they plead severally not guilty, and the jury find the issue in favor of A. C. against B. C. wishes to obtain a New trial, but B. C. who was acquitted has no desire to run the risk of a second trial. The English Courts will not, in such case allow a new trial, for they will not suffer him who was acquitted for the sake of retaining the other.

Phil. 326.  
Tha. 84.  
o.F.R. 338.

In Court the Court will grant a New Trial to the party appearing without conviction the most against the other. It is said to be absurd to reverse rulings of a jury, but it seems to answer the purposes of justice as well.

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A new trial is never granted to one who has liberty to plead the Statute of limitations. For though he might have raised himself before the release yet as, between the parties, it is certainly unjust and pernicious as a principle of policy, the court will not indulge him with a second opportunity.

to rain in a variety of orders, where the rain is  
in its own measure, captions and illustrations  
and for which I must assume a new model to the world,  
though according to Sumner for the 1<sup>st</sup> is en-  
titled to something of the just fine or a verdict exp-  
and him the doctors will not want a New Trial.  
Thus in Hamster for classing the 1<sup>st</sup> with Shelley  
a book of the soft proves that he stole a sheep  
and the law find a verdict for doct book is  
a book that his proof was no justification for the  
words yet the 1<sup>st</sup> would not in such case stand  
a New Trial, for the doctors would necessarily have  
been smiling.

& the Comm.<sup>rs</sup> applications for New Trials must be filed & made within three years from the time of the former trial.

[illegible]



## New Trial.

July 13.

By a late rule of the Sup. Court, a new trial may in many cases be granted on motion, &c. when the four bills of exception were filed.

The usual mode of seeking the application however, in Court is by petition; this was the mode universally adopted, when the Legislature conferred the power of granting new trials.

The petition sets out the grounds of the application, like any other petition, and the opposite party may stand to it, demur to it, or deny it. But still if it demurs to it and his demur is overruled then it is to be a trial on the merits for the Court will not set aside a judgment if it were merely because a demur to the petition has been overruled.

The binding or compulsion of this petition is not due to the proceedings. The granting of a new trial strikes the judgment but the compulsion is no longer needed.

In Court of Sessions the petition for New Trial the <sup>2d</sup> party respondent dies, his executor may be cited in his own right, as in action, and the petition may proceed, provided the right of action survives to or against the executor, according to the nature of the case. It is then if his testator was <sup>2d</sup> party in the action, a continuation, if his testator was <sup>1st</sup> party.

Note, as to the last case that the Petition to abate and amend writ was made before our trial.

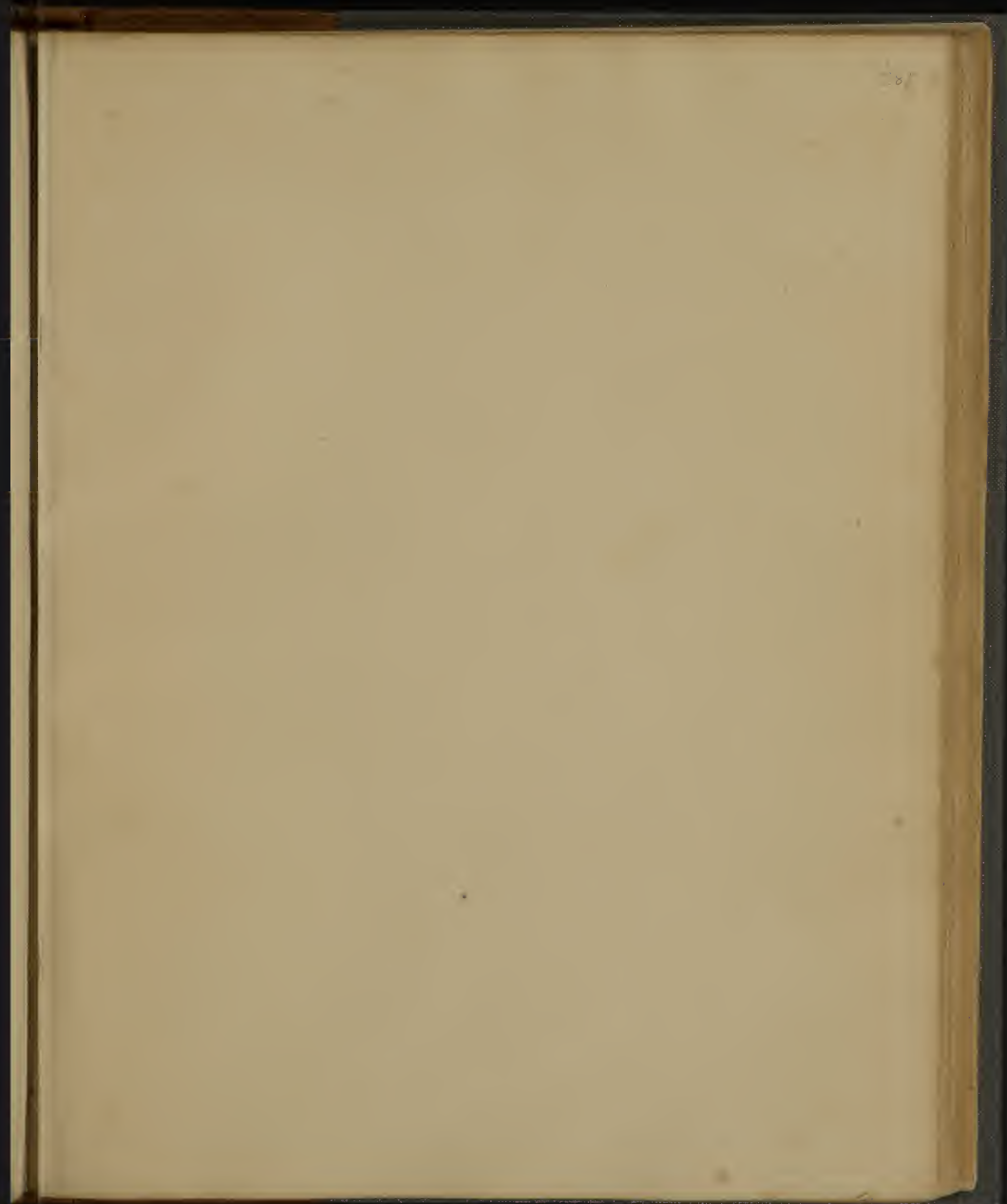
## New Trials

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has power to grant New Trials. See Revised Stat. § 221.  
If the right of a trial in the case, before/does not  
survive the petition, must be denied. Because no new  
trial can then be had. Subject to the foregoing qualifi-  
cation, the petition might be granted, if pending  
the petition the petitioner should die.

As to costs on New Trials see S. & R. 619, 1, 3 R. 539, 541, 3 R. 507.  
The Clause when the costs are directed to abide  
the event of the party who was unsuccessful, on the  
first trial succeeds again, he shall have the costs <sup>S. & R. 619</sup>  
of both trials. But if he who was defeated on the first <sup>6 R. 539, 541</sup>  
trial, succeeds in whose favor, the new trial is granted  
succeeds on the second, he shall have the costs in  
the second only. Yet in that case, the other party has  
not the costs of the first trial.













## BILLS of EXCEPTIONS

A bill of exceptions is a statement of facts and of  
 some interlocutory judgment pronounced before them con-  
 veyed to the record, for the purpose of leaving the  
 foundation of a writ of Error. The statement con-  
 sists of facts, not actually appearing on the record  
 but which are the foundation of some interlocu-  
 tory judgment, which the party against whom a writ  
 goes to be error is made.

It is called a bill of exceptions, because it con-  
 tains exceptions to the interlocutory judgment.

This mode of founding Error, was unknown to  
 Common Law, and was introduced in England  
 by the Statute of Westminster 2.

We have no Statute on the subject, but have adopted  
 it from the English law.

A bill of exceptions, being to found a writ of Error,  
 cannot be taken except in a Court from which a writ of  
 Error lies. It cannot for example be taken in Courts of Pro-  
 bate, or before commissioners Loc.

On cases in which a bill of exception may be taken  
 has been mentioned supra - viz - the overlooking of  
 an offer to answer to evidence.

It lies in England, for the misdirection of the Judge  
 if evidence rejected is admitted, or rejected, or  
 bill of exceptions may be taken. This is also a ground for Error.



## Bills of exception.

But if the judge admits the party's evidence, a bill of  
 Phil. 316. c/o<sup>ns</sup> is not allowed, because he did not direct the jury  
 how to find upon it— as to find in favor of a record,  
 1 Mac 326. which is conclusive.

If error is refused above in the opinion of the party  
 2 Mac 427. it ought to be ordered, — or reversed when it ought to  
 2 Mac 281. be reversed; a bill of exception may be taken — and  
 2 Mac 486. so for allowing; or overruling challenges of jurors

But on an interlocutory judgment relating to mere proce-  
 dure — a bill of exception cannot be taken — as for example  
 — the continuance of a cause, — compelling the party  
 to plead — or moving or refusing to order bonds to pro-  
 ceed &c.

Therefore the objection, of any kind is discretionary.  
 King 41. with the Court; as for extra the cases last put, — grand  
 Jurors, 2 Mac 298. nro new trials; — improper forms, or preventing them &c.  
 Phil. 316. If there error is not prejudicial, and therefore a bill  
 1 Mac 324. of exception would be improper.

Suppose a new Tr. granted in a case in which, or by  
 a Ct. by which, it is not to have been preventable; or by a  
 justice of the peace?

A bill of exception may be taken in all Courts where  
 1 Mac 326. judgments are liable to be reviewed in Error: c/o in Phil.  
 2 Mac 427. 2 Mac 356. 2 Mac 356. 73. — Exchequer in Error. — There are some cases contra  
 2 Mac 316. with R. R. the proceeding being error &c.

In error, it may be taken in the Sup<sup>r</sup> Ct. — Court of Ct.  
 King 289. and further &c. Some doubts are expressed as to the latter. King?

# Bills of Exception.

They are not allowed in prosecutions for Treason, Sedition, or felony: For the judges are counsel to the prisoner, and must see that justice is done him. This seems to be an extraordinary reason, since the Bill is always founded on a supposed mistake of the Judge. Such cases are not within the Stat Westminster 2. — The true reason is, there cannot be a second trial.

Whether it is allowed, or is excluded for offences, not capital. — 1. Bac. 325. 2. Hawk. 428. — 1. Leon. 5. 1. Rant. 366. But 316. *Supra* 1789. 1. Levin. 58. Poly. 15. Hoby. 269. For perjury. In *Ex* it has once been allowed on an indictment for 1. Leon. 5. 1. Bac. 325. *Ex* 1789.

Regularly, when a bill of exceptions is allowed, the Court will not suffer the party to move in error of judgment on the point on which the bill was allowed, — having once given their opinion: and the party's remedy is by writ of Error. This rule is sometimes dispensed with in *Ex*.

The object of the bill, being to reserve before a higher Court, a judgment on some collateral point, it is, of course, not allowed to embrace the general merits of the case, that is, to reserve the whole controversy into a further examination. A bill therefore, made after judgment, and containing a general statement of the facts, and circumstances, though sometimes practised is inadmissible: And if the Court below allow it, the Court above, in Error, will abate the writ of Error.

Sed. 34.  
Sed. 68.  
1. Hoby. 324.  
1. Bac. 325.  
1. May. 416.  
Hoby. 15.

1. Bac. 327.  
2. Hoby. 237.  
2. Leon. 117.  
1. Rant. 366.

But 316. 17.

1. S. R. 549.  
Sed. 161.  
1. Hoby. 533.  
But 316.  
1. Hoby. 536.  
2. Leon. 276.

Work. 371. 454.  
77.  
Table. Conf. infra

## Bill of Exceptions.

1 Mac 325-6. The bill is authenticated by the signature of the judge, or  
 2 N. H. 32. of one judge in S. C. who appears in the Court above, and  
 Conf. 161 acknowledges his seal.

The bill must contain a statement of the interlocutory  
 1 N. H. 316 judgment and of the facts on which it was founded.  
 1 Mac 326

If the facts are truly stated, the judges are bound to con-  
 1 N. H. 326. tain it, that is, sign it; otherwise not. If the judges  
 2 N. H. 237. refuse to sign, a writ lies, on the Stat. Statute 2. commanding  
 1 N. H. 316. them to sign. — Does this writ lie in Comm.? In Comm.  
 1 N. H. 316. it is certified by the Chief Justice, or providing a judge.

1 N. H. 315. In S. C. the bill must be tendered, or at least, the substance  
 1 N. H. 288. of it, reduced to writing, at the trial. In Comm. the party  
 1 N. H. 315. must give notice of his intention to file one or more before  
 1 N. H. 315. when the cause of exception comes. And the bill must be filed

2 N. H. 276. within 24 hours after verdict recovered, in case of trial by jury  
 1 N. H. 315. and within 24 hours after judgment when the trial is by the Court;  
 — always before the C. is read. In Comm. within the 24 hours, Sun-  
 day is excluded.

In Comm. the common practice is to state, not only  
 the interlocutory judgment, and the simple facts, but also the grounds  
 of objection which were taken at the trial.

1 Mac 327. — Bill of exceptions is not a supersedeas of the judgment, but  
 12 N. H. 509. merely enables the party to obtain a supersedeas, by writ of  
 Error.

Form of a bill of exceptions. "N. H. Court of" "Bill of exceptions" "A. & B."  
 "Action of Plea of — In the trial of a cause, the following errors were committed."  
 "And I certify that the same are as follows: — It is certified in fact, and now,  
 the defendant excepts, and prays the judge to certify it. This becomes part of the  
 record and lays a ground for writ of Error. In S. C. it is no part of the record, but is a  
 separate document."











# WRITS OF ERROR

The principles governing writs of Error have become the English books, must be every where essentially the same. But the mode of carrying them into execution is different in different States. Cases suffered under the former the English mode, but the principles as to reversal of judgments are the same.

A writ of Error is a commission to judges of a higher Court to examine the record on which judgment was given in the Court below, and to affirm or reverse it according to law. 2. How. 87.  
3. How. 457.  
2. How. 25.  
2. How. 40.  
2. How. 209.

In England the writ of Error does not run against the Court below, but against the party who is bound by the judgment. The defect in Error to appear: he is summoned for his species and amendment errors. 2. How. 207.  
2. How. 216.  
3. How. 457.

Errors of Error, when founded on a mistake of the Court below, is ground for the reversal of such judgment, but not where the error is some fault of law apparent upon the face of the record; not to reverse an error in the determination of facts. 2. How. 207.  
2. How. 216.  
2. How. 199.  
2. How. 233.  
2. How. 234.  
2. How. 235.  
2. How. 236.

By the term "writ of Error," without more is popularly meant, one of the above description, that is, one founded upon an error apparent on the record. 2. How. 207.  
3. How. 457.

If in the writ the defect in Error can be reversed, as in the case of a judgment in the nature of a debt or damages, or any thing real or personal, it is an error of law, and a reversal of all estates will bar it. But it is otherwise if it be to reverse only judgment in a case of fact. 2. How. 236.  
2. How. 197.  
2. How. 198.  
2. How. 200.  
2. How. 201.



Writing Error.

and each incorrect below.

Err. 5.

1. Writ. 207.

2. Writ. 208.

2. Writ. 215.

There is a species of writ of Error faciendum in the  
 ter of fact, which the record. This is to correct of Error  
 capable of being a question of fact, but not to others, as  
 the exchequer chamber; or it may be brought in the  
 Court in which the judgment was rendered; for the just  
 amount is not in question in it since it is a correction

of an error in fact not known to the Court. It is then

1. Writ. 207.

2. Writ. 157.

Writ. 125, 126.

Writ. 170, 171, 172.

2. Writ. 157.

4. Writ. 207.

2. Writ. 207, 208.

Writ. 167, 168.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

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Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Writ. 207.

Calla a writ of Error coram nobis. For example, if  
 judgment is rendered against a person, and a writ is issued  
 against an infant without his having appeared by guardian,  
 then, his mother is an error in fact which must be  
 set aside. The foundation of a Writ of Error coram nobis.

So, if the plea is alibi when judgment is rendered.  
 or if the justice who gave judgment was interested in  
 the cause. Or if one such error renders a verdict  
 to the plaintiff, and the plaintiff is still alive. (Writ. 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).

So if where the debt lies, and the debt is not paid, the plaintiff  
 should take judgment and execution. The first error, a  
 writ of Error lies on this account.

A writ of Error will not lie on any judgment of a  
 Court not of Record in County Court in England.

In Eng. it lies not on a decree or sentence of a Court  
 of Chancery; but in England in Statute, error lies on a decree  
 or sentence of Chancery. (Writ. 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000).

But on a judgment given in the Chancery office, in Chancery,  
 in Eng. Error lies, for this of Chancery is binding to the Court, since

Wrote Error.

245

Case is a Court of Record.

Spurious errors in law and in fact together in  
2d ill. (2 Ma 27-10 50m 300. 1 Nov. 76. 100. 147. 200. 105.  
1 Aug 231. 1 Ma. 252.) For their require different tri-  
al, matters of fact by the Jury; and matters of law  
by the Court. Feb. 52. 1x. 93. May. 259.

But tho' matters of fact and of law are blended 2 Ma. 218.  
in the apportionment of Errors, yet if the defect in Error 1. Feb. 8.  
pleases in nullis est errorum in recordo. Le loves the ad. 2d. 268.  
part 358. 6 Ma. 113.  
208.  
1 Ma. 252.  
con. top of the double ap. in fact, and generalis, con.  
for the error in fact. He should denure.

Though the defect is called suppliciter, it is not, is that 2 Ma. 20.  
it would be raised by a general denurance. Part 358.9

The apportionment of several errors in fact amounts to 50m 300.  
suppliciter. But it is otherwise where several errors in 2 Ma. 20.  
law are apportioned. This is not within the Statute 27. Ed. 1 Ma. 95.

If an error in fact be well apportioned, it should be 50m 300.  
denured. In nullis errorum to be corrected. Feb. 57.  
2 Ma. 218.  
Part 45.  
Part 252.

Suppliciter be ill apportioned, in nullis est errorum 50m 300.  
could be 50. 12. 29. 52. 1 Ma. 231. 2. 1x. 277. 1 Nov. 75.

It has been received in some 1st ill. that the error  
in one sufficient error in law, of errors in fact and  
apportioned, does not vitiate the writ that was ac-  
cused. 1 Ma. 27. 33. In another case, on plea  
in abatement founded on the blending of errors in  
law and in fact, the 1st ill. directed the abatement 1 Ma. 268.  
of the errors in fact, to be struck out, & denured for the other 2. 1x. 277.

# Writ of Error.

An affirmance of Error <sup>in fact</sup> contradicts the record is not good (2. Wac. 218. 219. 1. Nol. 57. See also 3. p. that the judge does before affirmance or that the J. did not sit on the day of the date of the judgment, or that the J. in error, did not appear, when his appearance is mentioned on the record. Kirby. 184. Cr. C. 12. Cr. J. 508. Hold. 265. 1. Hol. 702. Dy. 89. Cr. 81. 469. Ray. 2311. 5. Com. 301. Salk. 262.

In none of these cases does the plea of in nulla correctione in recordo, confer the affirmance. *supra*.

1. P. 412.  
C. 967.  
1. Com. 300.

When error in fact is affirmed the proper conclusion of the affirmance is with an averment "*Loco parentis contra*", and that the conclusion should be to the contrary. Sals. 58. 2. Wac. 218.

It is a general rule that for Error in fact a writ of Error (*ut ante*) *errorum voluit*, does. 5. Com. 285. 1. Nol. 57. As for example, in the case, of *coverture*, <sup>in fact</sup> in fact as the 4. Wac. 39. 2. St. 218. Salk. 400. 3. Com. 177. So if one dies and recovers as executor as to J. who is still alive. 1. Nol. 761. 2. Lev. 38. 1. Inst. 207. Cr. J. 5. See also *last*.

But generally, if the Error is in law, a writ of Error *errorum voluit* does not lie (5. Com. 286. 2. Wac. 215. 1. Inst. 207.

1. Lev. 149. Nol. 749) except when

5. Com. 286.  
2. Wac. 215.  
1. Nol. 746.  
1. C. 110. 188.

occasional as demanded of the Clerk of the Court, or Sheriff or the officer of the J. 1. Nol. 746. Sals. 13. 21. Then a writ of Error *errorum voluit* lies for error in law, since in these cases the Error does not proceed from any fault or mistake in the Court. It is not strictly an Error in *fact*.





## Writ of Error.

To a decision to our decisions if the judgment is reversible - for if it is erroneous as to part the error, as where there should be no more costs than awarded.

But our Sup<sup>ts</sup> & Ct in a C<sup>t</sup> Error, have reversed a judgment in part and affirmed in part that is reversed as to part of the costs and affirmed as to the other, where the judgment was paid against several. Contra 2 W. 199-p. 228. 104. 76. 6. 289.

No person can bring a writ of error, except a party or privy to the first judgment. 2 Bl. 355. 5 Com. 291. 104. 76. 755. Example of privies. Heirs, executors, administrators, predecessors, 2 W. 195-6. 104. 76. 749. 2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

It is a general rule that no person through a party can reverse a judgment unless the error was to his disadvantage. 2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

Therefore if one of several defendants obtains judgment he cannot join in a writ of error to reverse the judgment rendered against the other. 2 W. 190. 104. 76. 755. 104. 76. 755.

Held, 7. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

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2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

2 W. 195. 104. 76. 755. 104. 76. 755. 104. 76. 755.

Writ of Error.

299

In these cases the writ is itself defective that is, incomplete.

It has been ruled in Good that where the plaintiff sues in the Sup<sup>a</sup> & it is that he must do it in the same term in which the action is commenced. Hud. 85.  
It was so in the Sup<sup>a</sup> & it must be done in the same term in which the original demand was rendered. Hud. 239.

It has been decided in Good that the award of a life rent and appraisement on similar grounds among the owners in a case of error as for example two Justs in notes of hand. Hud. 160.

According to the practice in Error a writ of error can only be signed in a judge of the Ct. to which it is returnable.

It is held that until record, the copies differ the one in Sup<sup>a</sup> will show the original record to be brought in. Hud. 10.

In Sup<sup>a</sup> it seems to have been formerly decided that a writ of error to the assizes must be signed as a supersedeas till 4 day, for obtaining from the Ct. the allowance of it had expired. But it is now held that it is no supersedeas till the allowance. 2. H. 239.  
2. H. 240.  
Hud. 239.

But the allowance is a supersedeas only for 4 day. The judgment is a writ which is the time answer to it. And in fact it has been put in the supersedeas continues otherwise not. H. 239.

In Sup<sup>a</sup> the writ is with directions to the amount

Re. Bond

the "Golden" + 2200 = 2200 + 2200 = 4400

Delphos, Ind.  
19<sup>th</sup> Dec. 1890.

Large trees composed the woods 'bare rock' (granite) and  
'barren' without flowers. Quercus alba. This will

4. Hoc. 5. 23. relatus te incubator no. 2. excedit. via. info.

Dr. J. 550. <sup>2</sup> Excitator and admittances have a superfluous number  
of force, without loss in speed. They are not within  
the field of the eye.

The work of *Enca* became a supersession of the work  
done in the office hours. By a series of design decisions  
to him.

His rule is settled in connection as to the time of  
pleading an abatement of writ of Error. He admits  
within the time allowed for other pleas.

2. Rec 208  
Thos 238  
Lett. 235  
2d Rec 27  
Com. 1733

of one with a broken state or a circumstance by the  
defect of the paper for a second one is no sub-  
stantial defect. State of the 2d of God - death of the father

1846. 558  
 559.  
 560.  
 561.  
 562.  
 563.  
 564.

The "Sic" notice in E. O. is not to be taken as the intended end of the  
 It is said that a bill in error, if committed shall not have  
 a chance to be altered

# Writs of Error.

301

In England, a writ of error does not abate in death of the plaintiff, but a severe penalty is incurred by the executor. See, if the best view. Known in Conn? 2. Nov. 207-8.  
Penal. 34.  
Stat. 254.  
Sect. 267.  
Bank. 235.

In Eng. & Amer. Courts, a writ of Error is not a writ of right in all cases. In England, it is to be obtained by the Clerk of Errors, before it is operative. 2. Nov. 691.  
Sect. 321.  
1. Nov. 412.  
2. Nov. 210.  
Sect. 254.

In Conn, the judge is to examine the record, and if he thinks that there is no probable ground of error, he will not issue it.

Error is not predicable of the proceedings on petition for New Trial.

But suppose a new trial granted in a case in which from its nature a new trial could not be legally granted, (as in Treason, felony &c.)?

Held an error. It seems to be sustained notwithstanding a writ of Error on the judgment since an erroneous judgment is binding & will be reversed by writ of Error. 2. Nov. 584.  
S. 345.  
Nov. 750.  
2. Nov. 170.  
2. Nov. 211.  
2. Nov. 462.  
S. 32, 33, 34.  
S. 35, 36, 37.  
Nov. 398.  
Nov. 76.

But in some cases the Court will allow proceedings on the action of debt, in title & execution of the writ of Error. If a third person obligates himself to pay a debt shall be recovered in a suit, he is not liable for pursuing a writ of Error. 2. Nov. 370.

When the execution is completely executed, as in taking the debt &c. and in paying him, no writ of Error is now supposed to be available. 2. Nov. 670.  
2. Nov. 697.  
1. Nov. 30.  
2. Nov. 654.



4 Nov 684 *It is possible* was taken on a certain case. There

2 Nov 202 *It is* whether the word is a superfluous or not?

According to 2. Nov. 49. the word is a superfluous

Nov. 276 563 *It has been* occurred in court that it is not a superfluous

Nov. 276 563 *It has been* occurred in court that it is not a superfluous

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Writ of Error.

33

If the writ in Error is now granted, there is no room  
of affirmance or reversal. but merely for the plaintiff  
to recover his costs in Error.

A reversal & judgment in some cases, does  
reverse the proceedings, & reverse the original execution.  
If passed on lands, for example, are taken, and sold <sup>2d Bo. 232</sup>  
by the officer, & delivered to the executor as a satisfaction. <sup>377.</sup>  
If a judgment is afterwards reversed the property <sup>1st Bo. 787.</sup>  
is restored to the original defendant. <sup>Bo. 179.</sup>  
<sup>Bo. 241.</sup>

But if the property is sold by the sheriff on the  
execution, to a stranger. It will hold in no such  
situation the reversal of judgment. <sup>Bo. 232.</sup>  
In such a case, a writ is required by law to set it. This writ is  
granted on principle of public policy at large. <sup>Bo. 246.</sup>  
Hence the property is lost. (Rule is otherwise in  
town & land. for it is then not sold at public  
auction as the sheriff did & passed off to the judgment  
executor.

In this case, however, the party may have in <sup>Bo. 183.</sup>  
damages the amount for which, the property was  
sold. <sup>Bo. 246.</sup>

In such case, however, as to be in, that collateral things, <sup>Bo. 246.</sup>  
executed are not reversed by a reversal. "collateral  
things executed are reversed." Bo. 246.

If one is execution on the original action, & another  
and before judgment reversed against the sheriff in  
the case of the original action. In reversal the action  
for the debt is gone. <sup>Bo. 246.</sup>

Writ of Error.

As  
but it would be useless if independent evidence had been obtained in the action for the cross before the original judgment was reversed. Then independent remains intact & the "Lexington" is still the same as the work of error for how the "collateral thing" is secured.

But in that case the Sheriff might be relieved by an  
2<sup>d</sup> *habeas corpus*. If the rule has been a grossly, that  
the indictment against the officer, should follow the  
obtainal indictment. I could see how that could be jus-  
tice would have been done.

*But sup<sup>r</sup> more proper taken, and delivered ad  
appraisement, into the hands of the party in whose  
favor the erroneous judgment was, and he sells it at  
the price given & reversed—is the property restored  
to the plaintiff in Error? Judge Reeve thinks so.*

If the Sheriff should sell the property taken in ex-  
2. Mas. 222. ecution, even to a stranger, where he is not bound by  
law to sell it, it is restored on reversal: as for example,  
3. Mas. 770. in the case of goods of an out-lan, taken by Capt. in A.D.  
1. Nov. 1774.  
5. Co. 300.  
2. S. 275.  
return, where the Sheriff is not required to sell them, and  
to pay them for the kind.

Dec. 6, Sep. 69 Det I wild of Berce is barred in Count. It is not  
Chilly person who has  
same Count 1874, 1875  
1876, 77. Caught within three years from the season in which  
I was ad rec'd three in 70 within 20  
years from the season, or entering of the season  
on record.

When instrument is for the left in Barre 2  $\text{C} \text{ } \text{D} \text{ } \text{E} \text{ } \text{F} \text{ } \text{G} \text{ } \text{A} \text{ } \text{B}$





# Head of Error

1. Jan. 1862. It is allowed however, I believe, as a necessary  
practice in all cases.
2. Feb. 57. It is not, allowed in Eng. land, in debt on record in  
Kane against bail in Error. The common cases, the  
2. 4. 7. 1864. allowance of interest is discretion only in Eng. land.

Cases exemplifying the effect of our affirmance,  
re reversal of judgment on writ of error.

It is in the Court below.

Case 1. Judgment below for A to recover of B  
100<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup> and 20<sup>l</sup> 8<sup>s</sup> cost. Judgment reversed before  
I had collected a new part of his execution. — Judg-  
ment above is, that the judgment below be reversed,  
and that B recover of A 20<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup>, the amount of the  
cost incurred by B in the Court below, and the  
costs are recovered by B on the writ in error.

2. The case is similar, except that A had collected  
on the contents of his execution, namely: 100<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup>  
and 20<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup> cost. Judgment of reversal as before, and  
that B recover 140<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup>, viz. the 120<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup> paid to A, on the  
wrong judgment and 20<sup>l</sup> 8<sup>s</sup> 6<sup>d</sup> cost which B is entitled to  
recover in the Court below.

3. The case is similar in fact to A as before, — a firm-  
re in the Court above. — Here the judgment above is, that

Writ of Error.

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The motion below is affirmed, and that A the defendant in error, recover his costs on the suit in error. The motion below is also operative. Subsistent on the first judgment is also allowed, if the JD in their discretion think proper, and execution issue for it. The practice, I receive, to allow it of course.

Feb. 2. 182.

4<sup>th</sup> The judgment below, was in favor of B, the defendant below. A, by writ of Error, reverses that judgment. The motion in this case is merely a motion of reversal. If the Court above is competent to try questions of fact and B.R. in Error, and Sup<sup>r</sup> of Error in Error. A, on the motion of reversal, enters the cause in the Court above, for trial; and on final judgment, if he prevails, recovers together with his debt or damages, all his costs, which occurred before the judgment of reversal, as well as those, which have occurred since. But he recovers no cost on the suit in Error. If A had paid the cost, taxed against him, on the judgment below, he would have recovered that on the judgment in Error, as damages.

But A, must enter the action, I add all, in the same term, in which, judgment of reversal is entered. 1. Nov. 25  
practice

5<sup>th</sup> The Court which reverses the judgment in the last case, was not competent to try questions of fact as the Exchequer Chamber in E.D. & the Sup<sup>r</sup> of Error in Error. The

## Writ of Error.

Graham v.  
Crawford & Co.  
1803

Ex. H. 30.  
Lia. Ho. 9.  
Carth. 319

The Cause is either remanded, to the Court below, where it must be again possessed with, or it is left for final judgment. It will be remanded and execution issued by the Ct of Error.

1<sup>st</sup> Remover in the Court below to the declaration; — Declaration as unavailing sufficient. — In writ of error, the judgment is reversed, <sup>it would be as well</sup> for A. to enter, since his own declaration is expressed insufficient, and the def below never wished to enter for trial.

2<sup>nd</sup> Declaration, in the Ct below, advanced insufficient. — Reversed on writ of Error. — Here A enters for trial, if the Ct above can try questions of fact, for he had a good declaration, and the merits have not been tried; since the Ct above has rendered only a judgment of reversal, not a judgment for A. to recover. And the Court above, cannot on the judgment of reversal as contain the damages.

3<sup>rd</sup> Plea in bar, removed to below, and as unavailing sufficient. — Judgment reversed. — A enters for trial, for as yet there is no judgment for A. to recover, and on the face of the Record, he has a right of recovery.

4<sup>th</sup> Plea in bar, advanced insufficient below. — Judgment reversed. — If A should enter it would be to no purpose: B does not wish to enter, for his object is to defend, and there is no judgment against him.

Writing Error.

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It is in substance. I want to know that it  
was what — James D. Carter or James D. Carter, for  
that, for he has a good will.

11. Butler is a balance, as in the last case — Butler  
of Responsas master in the Court below — Responsas  
in Error: — I cannot enter for he has no will.

of Butler error is drawn for the reception, or re-  
jection of evidence. The will being made enter for that  
on reversal, whether he is in Error, for that, and  
whether the in and reversal is be a conviction him.

For example: It as not would exclude reversal that  
and reversal as a will of exceptions — It is not for  
that. Here he is held in Error, and the in reversal  
Error is in his error.

It is writing, was ex cause de error —  
It is not reversed. — Here he is held in Error, and the  
in and reversal is in his error: and I mean enter  
for that of the plea, for he is then possibly be reversed  
notwithstanding the conviction of his writing.

It is not in all the above cases in which the will  
is held is supposed to enter for that on a reversal  
after the will is reversed, is supposed consequent to the will is reversed —  
The question of fact — It is not the case the  
error is reversed to the Court below and then  
the question is not is not.



### Writ of Error.

When the judgment in Error, puts an end to the litigation between the parties, the action is never entered in the Court above, nor remanded for trial. —

The litigation is always ended, where the judgment is affirmed; — but it is otherwise, on a reversal of judgment, unless the judgment of reversal is against the original plea; and even in this case, i.e. where the judgment of reversal is against the original plea if the judgment above, is founded on the illegality and suspicion or rejection of evidence; the litigation is not of course ended and the original plea may still enter for trial, if he pleads.





















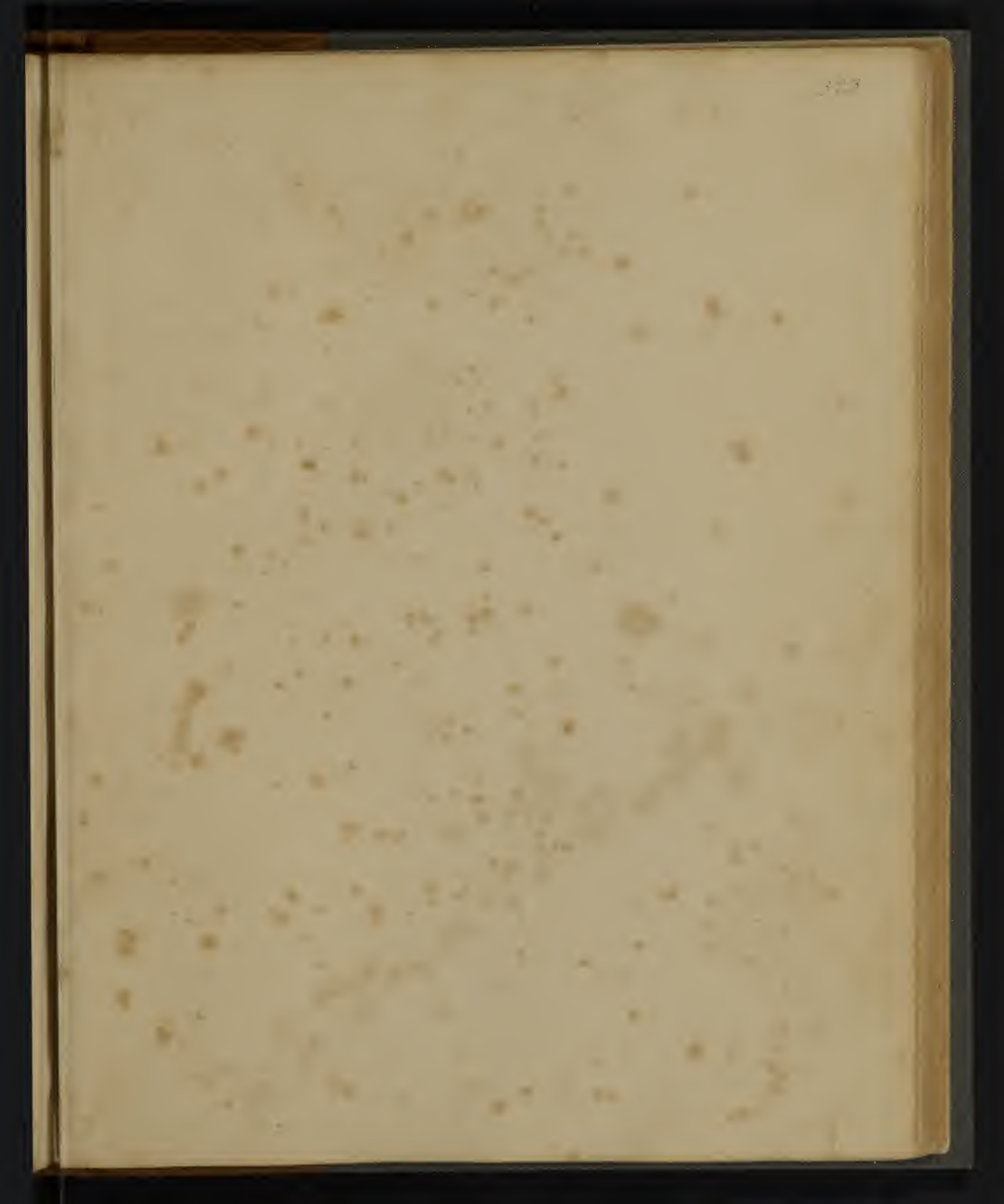


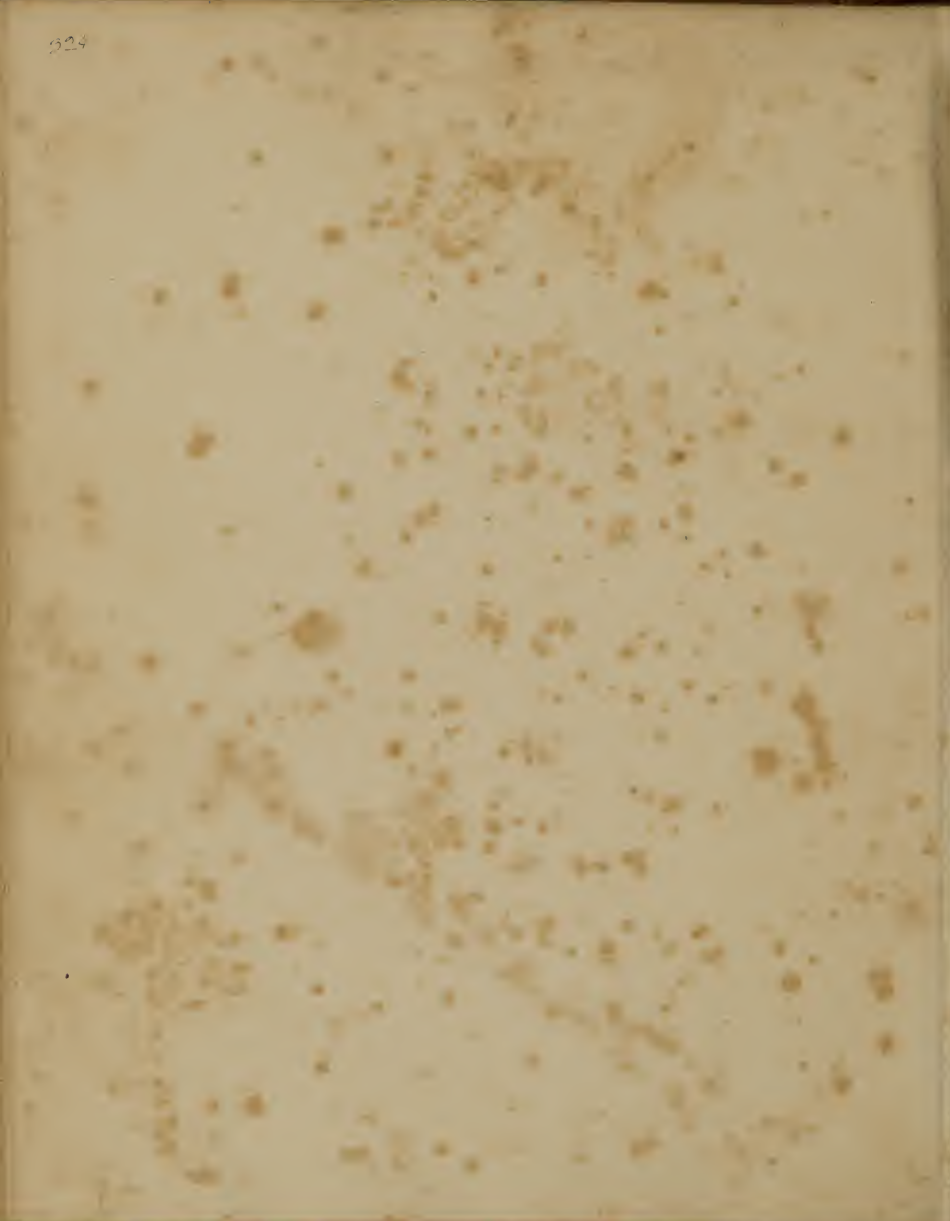












Of Practice on Connecticut.

But first, an introductory

By the presentation of our records of Law  
in Court cases.

1. Rough magnesia lts. no evidence of the power to have  
individual copulations of it given occurs, in which the  
title of land is not concerned, if the matter in dispute  
does not exceed 15 acres; and of all actions in note  
a bond given for money only, and awarded by two  
justices where the disturbance does not exceed 15 acres.

But we observe in the next case the loss  
of the sun in summer at least 4 days, and that in  
this we note a far more or it is far more than  
there is in actual.

That a celebrative note for more than 15 miles  
and not exceeding 35 ft. would certainly be  
more likely to be seen in a note by a pair of <sup>nest</sup> <sup>97-98</sup>  
more likely but substantially an observation that  
the note is. It is a note, note a pair of  
note.

I return a note to be made for 25 dollars and a  
 receipt for same. I have not time to go to the bank  
 and send a check at present. I will send a  
 check soon. I am very much interested in the  
 cause.

It is known to the rule in any of the following  
 quantities to be used in the note a note a note







By the Hon. S. C. Court

And in the case of *Ex parte*, in which the court has decided that in some cases, pending the suit and before judgment, it is not that of jurisdiction to remove.

It has therefore, since the court from which the cause was removed, and in which the original cause is depending; and regularly and from the court to which it is returnable that is an exception in case of a writ of *certiorari*, where the sum is more than \$50. or a writ of *certiorari* is not in this case, it is signed and issued by the justice but returnable to the County Court.

If a justice be, having removed, removed on any cause dies, or is removed before execution, or satisfaction; debt lies in the county, and if the debt, or amount does not exceed \$50, the action may be brought before another justice, and in appeal. If it exceeds that sum before the court of the county it must be brought within 8 years from the time of removal.

A Justice cannot try a cause out of the town in which he sits, except when a town justice in that town, in which the cause is to be tried, who is qualified to determine it. *Leaves in Brown, as usual.*

That the Governor, Lieut. Gov. & Justices of the Sup. Court, may in his discretion execute the office of justice throughout the State. That when several judges are sitting, they have no other jurisdiction over the parties, jurisdiction is the same as in a single matter.



Appeals from certain cases, to enter in the records of the County Court before the next opening. They pay fees out of appellant paid, as in *Sup. Ct. Rules* for Practice, Article 5, h.

## Jurisdiction of the County Courts.

II. The several Courts of Common Pleas & County Courts have original jurisdiction of all real actions, <sup>Sec. 81</sup> and those not cognizable by a single magistrate; <sup>Sec. 82.</sup> <sup>Art. 28.</sup> But all civil cases, not thus cognizable are regularly commenced before these Courts.

Of all civil actions (except on bond or note at issue in which the title of law is not a question) <sup>Sec. 81</sup> if the matter in demand exceeds the value of <sup>Sec. 82.</sup> 70 \$; and <sup>Sec. 83.</sup> if the action on bond or note given for money and such vouchers pay less than 70 \$, if the sum is 20 \$, and 10 \$, and 5 \$, they have jurisdiction and original jurisdiction, except that that their jurisdiction is not necessary in out of court.

That an appeal to the <sup>Sec. 84.</sup> 70 \$ line from the judgment made regarding a real action, is within the title of <sup>Sec. 85.</sup> bond is a question, and in all such cases, the value of the matter in dispute exceeds the value of <sup>Sec. 86.</sup> 70 \$, except in actions on notes or other paper given for money and covered by the vouchers.



2740. In an action for trespass on land, damages were more than 70¢, but the plaintiff's verdict was for 10¢. Evidence of little under 60¢, but the jury found it at 10¢.

2741. It has been decided that the rule of 70¢ applies to all cases of trespass, except where the damages are less than 70¢, or where the plaintiff's verdict is for more than 70¢. In such cases, the damages are to be assessed by the jury, and the rule of 70¢ does not apply.

2742. The rule is that if it appears from the record that according to the rule, for an action on a claim for damages, the plaintiff's verdict is for more than 70¢, the rule of 70¢ does not apply, and the damages are to be assessed by the jury.

2743. If granted, it will be held, on the ground, rendered, that the plaintiff's verdict is for more than 70¢, and the damages are to be assessed by the jury.

2744. In such cases, the damages are to be assessed by the jury, and the rule of 70¢ does not apply.

2745. In such cases, the damages are to be assessed by the jury, and the rule of 70¢ does not apply.

2746. In such cases, the damages are to be assessed by the jury, and the rule of 70¢ does not apply.

2747. In such cases, the damages are to be assessed by the jury, and the rule of 70¢ does not apply.



Practice of Courts below

Appeal may be taken from a judgment in a civil  
or criminal case, without a writ, or a writ of error.

But if a writ of error is taken from such judgment, it is a writ of error.

and the party who takes it is bound to show that the judgment is wrong.

and the party who takes it is bound to show that the judgment is wrong.

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and the party who takes it is bound to show that the judgment is wrong.



Value of one dollar is payable on every appeal from Court below. I not certified the appeal. I will not make it paid at the time of taking the appeal or the appeal must state. There can be no more of the Court be continued to prove the fact. <sup>stat.</sup> <sup>123</sup> <sup>123</sup>

It has been decided that an audita querela is <sup>not</sup> within the Statute, as to appeals, and <sup>to</sup> <sup>from</sup> <sup>the</sup> <sup>Sup.</sup> <sup>123</sup>

Either party may appeal, if <sup>not</sup> <sup>the</sup> <sup>party</sup> <sup>recovers</sup> <sup>more</sup> <sup>than</sup> <sup>his</sup> <sup>whole</sup> <sup>demand</sup>. <sup>Secs.</sup> <sup>where</sup> <sup>the</sup> <sup>will</sup> <sup>be</sup> <sup>altogether</sup> <sup>on</sup> <sup>favor</sup> <sup>he</sup> <sup>cannot</sup> <sup>be</sup> <sup>both</sup> <sup>more</sup> <sup>appeal</sup>. <sup>If</sup> <sup>either</sup> <sup>enters</sup>, <sup>it</sup> <sup>is</sup> <sup>sufficient</sup>.

If appeal is denied where it ought to be allowed <sup>error</sup> <sup>lies</sup>. Is it allowed or can the Court above over <sup>not</sup> <sup>quash</sup> <sup>it</sup>. Will error lie immediately on the <sup>denial</sup> <sup>of</sup> <sup>the</sup> <sup>appeal</sup>? <sup>Arg.</sup> <sup>Is</sup> <sup>it</sup> <sup>not</sup> <sup>for</sup> <sup>error</sup> <sup>to</sup> <sup>be</sup> <sup>taken</sup> <sup>in</sup> <sup>the</sup> <sup>Court</sup> <sup>below</sup> <sup>it</sup> <sup>is</sup> <sup>not</sup> <sup>to</sup> <sup>be</sup> <sup>quashed</sup> <sup>it</sup>.

If a case is not appealable and motion for an appeal is made, objection may be made to the motion <sup>in</sup> <sup>the</sup> <sup>Court</sup> <sup>in</sup> <sup>which</sup> <sup>it</sup> <sup>is</sup> <sup>made</sup>, or the appeal may be allowed in Court to which, &c. Or if a verdict is given <sup>in</sup> <sup>the</sup> <sup>last</sup> <sup>recept</sup> <sup>may</sup> <sup>be</sup> <sup>arrested</sup>, or the case dismissed in the Court ex officio. Or use of error lies if <sup>error</sup> <sup>lies</sup> <sup>in</sup> <sup>the</sup> <sup>recept</sup> <sup>may</sup> <sup>be</sup> <sup>arrested</sup>, or the case dismissed in the Court ex officio. Or use of error lies if <sup>error</sup> <sup>lies</sup> <sup>in</sup> <sup>the</sup> <sup>recept</sup> <sup>may</sup> <sup>be</sup> <sup>arrested</sup>, or the case dismissed in the Court ex officio.

(For the Equitable jurisdiction of County Courts see "Principles of Chancery," &c.)

Some relief for <sup>error</sup> <sup>lies</sup> <sup>in</sup> <sup>the</sup> <sup>recept</sup> <sup>may</sup> <sup>be</sup> <sup>arrested</sup>, or the case dismissed in the Court ex officio. Or use of error lies if <sup>error</sup> <sup>lies</sup> <sup>in</sup> <sup>the</sup> <sup>recept</sup> <sup>may</sup> <sup>be</sup> <sup>arrested</sup>, or the case dismissed in the Court ex officio.



## Superior Court.

§ 47 III. The Superior Court has no original jurisdiction, in civil cases, as to any subject. It has no original jurisdiction, as to any suit or matter, by which an adverse claim to land, for all, excepting a writ returnable to, or an execution issued by itself. But this is not properly a civil suit. (Code.) Action may be brought in county court, set common law and this is the usual practice.

This Court in cases issues writs of sc. facias returnable to itself, but this is a judicial not an original writ. It has also a general power out of the appellate jurisdiction of the Court.

It has appellate jurisdiction of many causes determined in the County Courts, (excepting and District.)

Its appellate jurisdiction of causes decided by the County Courts is generally the same, as of those decided by the County Courts. And an appeal lies to this Court from every sentence, order or decree, of the Courts of Probate.

For its equitable jurisdiction, see "power of Chancery" etc.

It has jurisdiction of all writs of sc. facias returnable to itself, and of all writs of sc. facias returnable in the County Courts or in the District Court, in civil and criminal cases, as to all cases in Equity, raised in the County Courts.

There are several different rules in a case in S. C. The Court for that he must do it in the term in which it is

statement of reversal or rescission.

The jurisdiction in cases of divorce, marriage, rehabilitation, and habes corpus, are treated under their respective titles.

Note.— It rarely occurs from a sudden, or a sudden abatement, when in a case in which the plaintiff has not recovered to find judgment in the Court of law. In such a case, after judgment of the Court of law, the plaintiff is usually advised to appeal to the Court of Equity, instead of abating, because, as in such a case, from the judgment of the Court of law, the plaintiff is usually advised to appeal to the Court of Equity, instead of abating.

## Supreme Court.

IV. The Supreme Court of Errors has jurisdiction in all cases of error, brought in the Court of law, or in the Court of Equity, when the error complained of is apparent on the record— but has no jurisdiction in cases of error, in fact.

## General Assembly.

V. The General Assembly has jurisdiction in all cases in which the Court of law or the Court of Equity has no jurisdiction, or in which the Court of law or the Court of Equity has jurisdiction, but the matter is decided by the Court of law or the Court of Equity.









direction must appear in the writ. <sup>See also</sup> <sup>120</sup> <sup>121</sup> <sup>122</sup> <sup>123</sup> <sup>124</sup> <sup>125</sup> <sup>126</sup> <sup>127</sup> <sup>128</sup> <sup>129</sup> <sup>130</sup> <sup>131</sup> <sup>132</sup> <sup>133</sup> <sup>134</sup> <sup>135</sup> <sup>136</sup> <sup>137</sup> <sup>138</sup> <sup>139</sup> <sup>140</sup> <sup>141</sup> <sup>142</sup> <sup>143</sup> <sup>144</sup> <sup>145</sup> <sup>146</sup> <sup>147</sup> <sup>148</sup> <sup>149</sup> <sup>150</sup> <sup>151</sup> <sup>152</sup> <sup>153</sup> <sup>154</sup> <sup>155</sup> <sup>156</sup> <sup>157</sup> <sup>158</sup> <sup>159</sup> <sup>160</sup> <sup>161</sup> <sup>162</sup> <sup>163</sup> <sup>164</sup> <sup>165</sup> <sup>166</sup> <sup>167</sup> <sup>168</sup> <sup>169</sup> <sup>170</sup> <sup>171</sup> <sup>172</sup> <sup>173</sup> <sup>174</sup> <sup>175</sup> <sup>176</sup> <sup>177</sup> <sup>178</sup> <sup>179</sup> <sup>180</sup> <sup>181</sup> <sup>182</sup> <sup>183</sup> <sup>184</sup> <sup>185</sup> <sup>186</sup> <sup>187</sup> <sup>188</sup> <sup>189</sup> <sup>190</sup> <sup>191</sup> <sup>192</sup> <sup>193</sup> <sup>194</sup> <sup>195</sup> <sup>196</sup> <sup>197</sup> <sup>198</sup> <sup>199</sup> <sup>200</sup> <sup>201</sup> <sup>202</sup> <sup>203</sup> <sup>204</sup> <sup>205</sup> <sup>206</sup> <sup>207</sup> <sup>208</sup> <sup>209</sup> <sup>210</sup> <sup>211</sup> <sup>212</sup> <sup>213</sup> <sup>214</sup> <sup>215</sup> <sup>216</sup> <sup>217</sup> <sup>218</sup> <sup>219</sup> <sup>220</sup> <sup>221</sup> <sup>222</sup> <sup>223</sup> <sup>224</sup> <sup>225</sup> <sup>226</sup> <sup>227</sup> <sup>228</sup> <sup>229</sup> <sup>230</sup> <sup>231</sup> <sup>232</sup> <sup>233</sup> <sup>234</sup> <sup>235</sup> <sup>236</sup> <sup>237</sup> <sup>238</sup> <sup>239</sup> <sup>240</sup> <sup>241</sup> <sup>242</sup> <sup>243</sup> <sup>244</sup> <sup>245</sup> <sup>246</sup> <sup>247</sup> <sup>248</sup> <sup>249</sup> <sup>250</sup> <sup>251</sup> <sup>252</sup> <sup>253</sup> <sup>254</sup> <sup>255</sup> <sup>256</sup> <sup>257</sup> <sup>258</sup> <sup>259</sup> <sup>260</sup> <sup>261</sup> <sup>262</sup> <sup>263</sup> <sup>264</sup> <sup>265</sup> <sup>266</sup> <sup>267</sup> <sup>268</sup> <sup>269</sup> <sup>270</sup> <sup>271</sup> <sup>272</sup> <sup>273</sup> <sup>274</sup> <sup>275</sup> <sup>276</sup> <sup>277</sup> <sup>278</sup> <sup>279</sup> <sup>280</sup> <sup>281</sup> <sup>282</sup> <sup>283</sup> <sup>284</sup> <sup>285</sup> <sup>286</sup> <sup>287</sup> <sup>288</sup> <sup>289</sup> <sup>290</sup> <sup>291</sup> <sup>292</sup> <sup>293</sup> <sup>294</sup> <sup>295</sup> <sup>296</sup> <sup>297</sup> <sup>298</sup> <sup>299</sup> <sup>300</sup> <sup>301</sup> <sup>302</sup> <sup>303</sup> <sup>304</sup> <sup>305</sup> <sup>306</sup> <sup>307</sup> <sup>308</sup> <sup>309</sup> <sup>310</sup> <sup>311</sup> <sup>312</sup> <sup>313</sup> <sup>314</sup> 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<sup>711</sup> <sup>712</sup> <sup>713</sup> <sup>714</sup> <sup>715</sup> <sup>716</sup> <sup>717</sup> <sup>718</sup> <sup>719</sup> <sup>720</sup> <sup>721</sup> <sup>722</sup> <sup>723</sup> <sup>724</sup> <sup>725</sup> <sup>726</sup> <sup>727</sup> <sup>728</sup> <sup>729</sup> <sup>730</sup> <sup>731</sup> <sup>732</sup> <sup>733</sup> <sup>734</sup> <sup>735</sup> <sup>736</sup> <sup>737</sup> <sup>738</sup> <sup>739</sup> <sup>740</sup> <sup>741</sup> <sup>742</sup> <sup>743</sup> <sup>744</sup> <sup>745</sup> <sup>746</sup> <sup>747</sup> <sup>748</sup> <sup>749</sup> <sup>750</sup> <sup>751</sup> <sup>752</sup> <sup>753</sup> <sup>754</sup> <sup>755</sup> <sup>756</sup> <sup>757</sup> <sup>758</sup> <sup>759</sup> <sup>760</sup> <sup>761</sup> <sup>762</sup> <sup>763</sup> <sup>764</sup> <sup>765</sup> <sup>766</sup> <sup>767</sup> <sup>768</sup> <sup>769</sup> <sup>770</sup> <sup>771</sup> <sup>772</sup> <sup>773</sup> <sup>774</sup> <sup>775</sup> <sup>776</sup> 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<sup>909</sup> <sup>910</sup> <sup>911</sup> <sup>912</sup> <sup>913</sup> <sup>914</sup> <sup>915</sup> <sup>916</sup> <sup>917</sup> <sup>918</sup> <sup>919</sup> <sup>920</sup> <sup>921</sup> <sup>922</sup> <sup>923</sup> <sup>924</sup> <sup>925</sup> <sup>926</sup> <sup>927</sup> <sup>928</sup> <sup>929</sup> <sup>930</sup> <sup>931</sup> <sup>932</sup> <sup>933</sup> <sup>934</sup> <sup>935</sup> <sup>936</sup> <sup>937</sup> <sup>938</sup> <sup>939</sup> <sup>940</sup> <sup>941</sup> <sup>942</sup> <sup>943</sup> <sup>944</sup> <sup>945</sup> <sup>946</sup> <sup>947</sup> <sup>948</sup> <sup>949</sup> <sup>950</sup> <sup>951</sup> <sup>952</sup> <sup>953</sup> <sup>954</sup> <sup>955</sup> <sup>956</sup> <sup>957</sup> <sup>958</sup> <sup>959</sup> <sup>960</sup> <sup>961</sup> <sup>962</sup> <sup>963</sup> <sup>964</sup> <sup>965</sup> <sup>966</sup> <sup>967</sup> <sup>968</sup> <sup>969</sup> <sup>970</sup> <sup>971</sup> <sup>972</sup> <sup>973</sup> <sup>974</sup> <sup>975</sup> <sup>976</sup> <sup>977</sup> <sup>978</sup> <sup>979</sup> <sup>980</sup> <sup>981</sup> <sup>982</sup> <sup>983</sup> <sup>984</sup> <sup>985</sup> <sup>986</sup> <sup>987</sup> <sup>988</sup> <sup>989</sup> <sup>990</sup> <sup>991</sup> <sup>992</sup> <sup>993</sup> <sup>994</sup> <sup>995</sup> <sup>996</sup> <sup>997</sup> <sup>998</sup> <sup>999</sup> <sup>1000</sup> <sup>1001</sup> <sup>1002</sup> <sup>1003</sup> <sup>1004</sup> <sup>1005</sup> <sup>1006</sup> <sup>1007</sup> <sup>1008</sup> <sup>1009</sup> <sup>1010</sup> <sup>1011</sup> <sup>1012</sup> <sup>1013</sup> <sup>1014</sup> <sup>1015</sup> <sup>1016</sup> <sup>1017</sup> <sup>1018</sup> <sup>1019</sup> <sup>1020</sup> <sup>1021</sup> <sup>1022</sup> <sup>1023</sup> <sup>1024</sup> <sup>1025</sup> <sup>1026</sup> <sup>1027</sup> <sup>1028</sup> <sup>1029</sup> <sup>1030</sup> <sup>1031</sup> <sup>1032</sup> <sup>1033</sup> <sup>1034</sup> <sup>1035</sup> <sup>1036</sup> <sup>1037</sup> <sup>1038</sup> 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## Practice of Composit.

Some of the Judges of the County Courts were justices  
of the quorum could not give original writs, <sup>out</sup> <sup>2 Feb. 1827</sup>  
of their respective counties. - Afterwards they were <sup>1827</sup>  
enabled by Statute to give such writs, in any part of  
the State if returnable to their own counties. - Now, by a  
late Statute, they are authorized to give process in  
"all civil matters" to be served in any part of the State  
- whether returnable to their own or any other county. <sup>Stat. 499</sup>

The Governor, - Lieut. Gov. - Messrs. of Sup. Court  
- report of his new judges and Justice of Supreme Court  
- Court at Sup. can in the civil war issue money 247 499.  
as well as give bonds that will run through the  
State.

The artist describes the place where





made in Connecticut.

The society is called a union by prosecution. The  
is given by union & prosecution & prosecution 24  
here the prosecution & prosecution 24  
time to the prosecution. 24  
be required of prosecution & prosecution there,  
but of no others.

In re. Is the recognizance introduced as a security for the property attached, and for any damage or expense by the attachment, or only for the costs? Generally supposed to be a security for costs only, and indeed so decided (not for them) in several cases. It was decided (2 L. R. 241 (Exch' 1881)) that plaintiff's recognizance is sufficient if he has ability to pay costs, and the common practice is to receive his money. This decision is founded on usage — and the lot there held that the recognizance was a security for costs only.

It is however the object of the bond to secure costs. This mortgage is useless, for the 2<sup>d</sup> standing costs without it, and of the object is to secure a "charge" for the property attached, "the object of the bond is defeated". The latter L. J. concludes with the words of the Statute — no more. But, if 2<sup>d</sup> security is insufficient, a new bond may be ordered in remission. <sup>1</sup> *Perd. 186.*

According to usage bonds in prosecution must  
 be taken on all qui tam prosecutions by certiorari  
 process; as the Def't's body is attached or arrested.  
 Thus, where a qui tam civil action is brought by process  
 of summons; Here the rule is the same as in other  
cases of summons.

Bond for prosecution must be given by some substan-  
cial inhabitant of this State, "in every case, in which a writ  
 issues in favor of one who is not an inhabitant of this  
 State: Even though the process is by summons. If the  
 writ is not given in the above case the writ may be  
awated.

So bond for prosecution is to be given by  
 some substantial inhabitant on the return stam-  
ent, if it appears to the authority returning it, that the  
Def't the inhabitant is unable to respond the  
costs which may be recovered against him. But in  
 this case - C.D. in those the writ cannot be awated  
 in the Court to which it is returned, for want of a bond.  
 For the signature, I conceive, is conclusive evidence  
 that the fact, the Def't's inability to pay costs, did not ap-  
pear to the magistrate.

But in this case the Def't is on motion for affi-  
davit of his inability, in the Court to which the writ  
 is returned, compellable to give bond in prosecution  
 with sufficient surety, or to be non suit. - So if his  
 inability accrues after the writ issued. That substantive of  
habitable shall be made in a reasonable time. - After the time  
has been enrolled to try the cause, will be too late.



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The second rule is, that if the defendant is a  
debtor, the mortgagee is not bound to take the  
mortgagee's security - and if the mortgagee is a  
creditor, the mortgagee is not bound to take the  
debtor's security, even though the sole bond is taken.

To be out of the question of the security is abso-  
lutely sufficient to sign, he is not liable - Except  
when the bond is taken, in which case if the mortgagee  
is a creditor of the debtor, the mortgagee is at all a-  
mounts liable. This cannot be apparently sufficient to  
take the creditors security away, & improperly attached.  
It would leave him as if nothing had been attached -  
That the Sec. 3d requires Security to be attached  
and it is not an answer such mark a Sec. claimants  
and claimants.

Even with a cross bond with security must  
be given, that the defendant prosecute to a verdict in  
the bond is not good.

Every party appearing from the judgment  
are bound to give the mortgage bond for cross bond  
with security. If the defendant bond is not given, then  
money bonds were not required in appeal from a re-  
fusal.

The abolition of a security are bound, that  
the former should prosecute his appeal to effect.  
By this it is not meant that unless a petition is  
made the bond is forfeited but that it is if he does not  
proceed on the appeal. For the appeal to be made, the  
mortgagee must  
prosecute to a verdict



and fail. The surety is liable for costs, if they are  
not paid by the appellant. — and for all the costs be-  
fore and after the appeal: yet bondsmen on appeal  
is liable only for the costs subsequent to the ap-  
peal. Quere. But he is liable for costs only, and

Real. Quere. 3 But he is liable for costs only, and not for them (if called table from appellants. Qu. Is it necessary for appellee to take out execution, and have a non est returned as to appellants personal property. [Said 1. Root 315 non est is not necessary, to subject bondsmen in b'ff. in costs. Qu. 3] Then

1. Leptocarpus will lie on decomposition or old, L. Leptocarpus.

The procedure is the same in the other case of bonds to prosecute. (Conte). On non est, as to the principal personal liability, the surety is liable. The imprisonment of the principal, on the execution will not discharge the bondsman. Indeed nothing is lost if payment of the costs will discharge him.

The giving of special bail does not liberate the 1st<sup>st</sup> bondsman on appeal (prob); nor does the bond on appeal, when plaintiff appeals discharge the bondsman for prosecution on the original issue.

Yon man for 24<sup>th</sup> mo<sup>th</sup> '92, is liable for entry of  
defend<sup>t</sup> in jail. As 24<sup>th</sup> mo<sup>th</sup> is before the return of the  
Exec. on To I suppose a conviction if 24<sup>th</sup> mo<sup>th</sup> is  
disat supra when 24<sup>th</sup> mo<sup>th</sup> was over.

[illegible]

54332

280.17

# Practice in Common Pleas.

The writ of Writ of Habeas Corpus is the basis for the writ of Writ of Habeas Corpus.

A judgment in favor of the appellant is final as the defendant on the appeal. Though on a new trial judgment is given for the opposite party. So I suppose if the first judgment is reversed by writ of error.

Where returnable?

In transitory actions, to be tried by Jury at 6.20. or County Court, the writ is to be made returnable in that County where Plff or Def dwells. This rule holds in actions against officers at common law, upon receipts for &c. But where they are complained of, under the Statute, the writ must be brought to that Court to which the writ is returnable. i.e. Original writs; though it may be in a different County, before the Jury or Court if either party dwells there.

If then the title of land is concerned the writ must be returnable to some Court in that County in which the land lies.

If quia tuam action must be brought in the County in which Plff or Def dwells, as in Common Pleas actions.

Writs before single magistrates must be executed in the town where Plff or Def dwells. Except when there is no magistrate in either one can compare by the same. Then the writ may be before a magistrate in one of the towns, as it is in common law.

If a writ of error be to the Jury or Court, it is returnable in that County in which the writ is complained of was executed. - The relation for new trials.









Practice in Connecticut.

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The debtor's land is also liable to be taken in attachment, but the officer is not bound to take same, when he can find the debtor - Nor unless he is inducted or assigned the duty, is it binding, unless he is so directed by the court.

The arrest of the body may be made in any residence of the officer in his company, and out of it - there may be arrest pleaded.

If property, real or personal, is attached, the officer must bring with the writ or a true copy of the writ, within the State, a true copy of the writ, with a recitation of the facts attached.

If real estate is attached the officer must also bring a true copy as at the Town Clerk's office, within 7 days next after attaching the estate, and before the time for serving the writ has expired. It is not valid against any other creditor or bona fide purchaser.

But the omission of this copy will not abate the writ - It is intended merely to give notice, to other creditors and purchasers.

The lien on personal-estate-attached, is not a full or entire lien, but a partial lien, existing within 60 days after final return made and this as well as the writ, as any other persons. Except when it is conceded or prior in time, or when it is not hollow, in fact even, then and more clear within 60 days after the return is made.

- If the lien on real estate is conceded, even





after the expiration of 60 days from final exam-  
 ination of the promise to deliver on demand, in which case  
 the demand be made to him by day, &c. — 2d. 1790  
 except <sup>in both cases</sup> where the goods are under a mortgage or incumbrance <sup>& 2d. 1790</sup>  
 in which case the right remains till the expiration  
 of 60 days after the incumbrance is removed.

If then the promise is to redeliver on demand and  
 no demand is made within 60 days &c; "receipts" — 2d. 1790  
 man' is bound to redeliver the property to def. <sup>in 40th</sup>  
 and on refusal is liable to him on trover. <sup>11th 1791</sup>

In an action on such receipt, it is not necessary  
 for the officer to aver in the declaration that the judg-  
 ment or execution remains unsatisfied. <sup>1790</sup>

Visible property within this State may be attached  
 though belonging to a person out of the State, <sup>in 1790</sup>  
 the attachment of it will hold the owner to trial. & 2d  
 In this case must not the action be brought in  
 the County in which the property is, & provided the  
 Off. himself, lives out of the State. <sup>1790</sup>

So invisible property or debts due to a debtor,  
 out of this State may be attached. <sup>Feb. 1791</sup>  
<sup>13th</sup>  
<sup>2d 1791</sup>

If visible property belonging to an absent or ab-  
 serving debtor is not exposed to view, service is  
 made by leaving a copy of the attachment with  
 the attorney agent, factor, or trustee, in whose care  
 the property is, and this service alone is  
 sufficient unless the absent debtor is an inhabit-  
 ant, 1791, or has dwelt in it, in which case



## Practice in Connecticut.

Stat. 13. A debtor must be left at his last, or usual place  
 13th 137. of abode, in the State.

The same rule holds where invisible property.  
 Stat. 133  
 13th 137. is left due the absent debtor so is attached.

But in all cases where the Def<sup>t</sup> is out of the State  
 at the time of the action commenced, and does not return  
 before the first day of the term, the cause must be con-  
 tinued to the next term; and if at the second term  
 the def<sup>t</sup> does not appear, by himself, or attorney, and  
 it appears probable that he has received no notice,  
 of the suit, the Court may continue the action to the  
 Stat. 251  
 13th 139 & 4. term next following and no longer: at which term,  
 if he does not appear, judgm<sup>t</sup> is to be rendered by  
 default.

But in all such cases, execu<sup>n</sup> is stayed till the  
 p<sup>l</sup>ff<sup>r</sup> keeps with the Clerk, a bond in double the am<sup>t</sup>  
 recovered, with one or more sureties, to refund to the  
 Stat. 25  
 13th 335. def<sup>t</sup> what he may recover of the p<sup>l</sup>ff<sup>r</sup> by reversing  
 336. or annulling the judgm<sup>t</sup> by suit to be brought  
 within 12 months after entering up the first judgm<sup>t</sup>.

2d 47  
 13th 176. If no bond is kept, the judgm<sup>t</sup> is irrevocable.  
 Once decided but since reversed that judgm<sup>t</sup> was void

13th 335-6.  
 13th 176. The Statute provides that real estate tak-  
 en upon such execu<sup>n</sup> shall not be aliened till  
 Stat. 25. after the expiration of 12 months or after a new trial set  
 on a suit brought within 12 months.

Stat. 133  
 (13th 137) A debtor is bound to answer the action  
 within a reasonable time.





line of mining service

It is well known to the public, or has been  
the fact, a great number of miners have been in the service of the  
P. & O. for many years, and it is well known to the public, or has been  
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Practice of Connecticut.

And in all of service is made on the last day allowed for service, it must be completed before the clock strikes eight is gone; and while there is time sufficient to enable the officer to reach the process.

17436. Ex parte prosecutions, brought to recover penalties are not within the above rules as to <sup>substantive</sup> notice. They may be made as for process, i.e. a warrant issued on a written complaint made to a magistrate.

If however they are brought in the form of civil action, as in many cases, they are, the usual notice in those cases is, I conclude necessary.

A citation to the defendant's conservator after the verdict returned, is not within any of the above rules. It is sufficient that reasonable notice is given; and if in the opinion of the Court, the notice is too short, they in their discretion will continue the cause, or postpone the trial.

One defendant cannot take advantage of a defective notice upon his co-defendant.

## Of Bail.

Bail in Connecticut, is of 2 kinds. 1. To the officer.

2. Special Bail.

1. When the body of the deft. is arrested under an  
 allowance, or in the state of the officer to apprehend <sup>3. R. 2.</sup>  
 such that he may be forthcoming in court, which he <sup>3. R. 2.</sup>  
 offers to the officer sufficient bail for his appearance.  
 This is bail to the officer.

If bail is refused, the officer must <sup>3. R. 2.</sup>  
 commit the deft. to prison for safe custody.

When a deft. arrested on mesne process, cannot be com-  
 mitted in Connecticut, without a mittimus signed

by a magistrate, i. e. a precept directed to the gaoler, <sup>3. R. 2.</sup>  
 during the term of committment, and requiring him <sup>3. R. 2.</sup>  
 to receive and keep the deft. till released by due order <sup>3. R. 2.</sup>

of law. Mittimus is necessary because the gaoler does not  
 order commitment, till the commitment, the gaoler, ac-  
 cording to our practice takes bail of good <sup>3. R. 2.</sup>  
surety - is the best bond, then taken, and is called <sup>3. R. 2.</sup>

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When the deft. 23. Feb. - 1796 - was taken by an officer <sup>3. R. 2.</sup>  
 the officer is bound to accept of good <sup>3. R. 2.</sup>  
 officers and to discharge the deft. <sup>3. R. 2.</sup>

...shall be held to have a power to arrest or to detain  
him to the sheriff, on their service a writ for his  
release: and he is supposed to continue in their custody  
until he is brought to court.

The plaintiff's right to arrest the body of the defendant  
in a case of breach of contract is founded on his ultimate right  
to take it in execution: but as the object is only to  
secure the defendant to be taken in execution, that having  
been done is in contemplation of law by putting  
him in the custody of sufficient detainers - a sort of  
detainers.

The sheriff's duty is to take a detainer - he  
is a detainer.

The sheriff's duty is to take a detainer - he  
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to the on (continued)

It has occurred some time, on the subject of the firm  
 into substance to accept take has been when we he  
 must be fixed, any consequence him to the officer to  
 be fixed but that the consequence must be fixed on  
 the subject, the consequence must be fixed on that day, must  
 be fixed, - consequence & fixed as the consequence  
 of the consequence in the consequence.  
 It is fixed with the officer, whether it will  
 be fixed or not, before the return of the consequence.

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If the bail are sufficient, the Jff. in Comm<sup>t</sup> is bound to accept an agreement in discharge of the officer, - at least he cannot recover a scire facit <sup>that is</sup> the officer after refusing to accept it. But the <sup>officer</sup> were apparently sufficient at the time. But must seek his remedy on the bail bond.

Then the Jff. having refused to accept an agreement of the bond, does the officer or escape, it is a case quo for the latter. But is bail sufficient? bail or bail appears, the scire facit, as <sup>the</sup> has altered to scire facit, and thus the case turns upon the question of fact whether the bail was sufficient or otherwise.

Here it is necessary for the officer to show that he refused to accept; or is it the Jff's duty to demand it? The Statute provides that no recovery shall be had against the officer unless he shall have taken "insufficient bail," or shall refuse to let the Jff. have the bail bond. - What duty is imposed on the Jff. in this case? But it is the Jff's duty to demand it, and that pleading insufficient bail is not enough to show that he refused to accept it.

It is also necessary to understand that the bail bond is a contract between the officer and the bail givers. The officer is not bound to accept it if he thinks it insufficient. The officer is not bound to accept it if he thinks it insufficient. The officer is not bound to accept it if he thinks it insufficient.

The Jff. cannot be forced to hold a scire facit in the absence of a plea of insufficient bail.









The certificate of the jury is a return of the verdict. 21. 11. 11  
 which is held the verdict.

The defendant is then arrested in due form. "He is  
 in the original detention law is not broken, and more rather  
 than a new transit, to place in any other place else  
 of course, he is not allowed to the new trial to be  
judged but for this is over merely to show his  
hand to be into custody. The defendant must be the  
only consequence himself the return of the  
verdict, and in the same way the law, of course is  
bound to return to law.

If it appears in County Court from a defendant  
 that he has a trial, a trial not containing the word  
 "in custody" no special bail must be given. The  
provision that must require the defendant in the trial  
to be in custody, or give special bail - Form 11.  
 waived that must be in accordance with the law.

The same rule applies generally, if it is the  
verdict in County Court, and the defendant is in the  
there would be the same evidence however. The  
verdict, Consequence is the same rule would be  
on a new trial incurred by either party or both  
as in the original action, and must be the same.

The verdict is the first act of defendant in the trial.  
 If it is in the County Court, the defendant must be in the trial  
once for defendant in the trial.

The verdict is the first act of defendant in the trial  
must be in the trial. In common law the verdict is the first act of defendant in the trial.

Practici in Connecticut.

83.

XX - 20  
60 - 9 - 16.2  
Fit "mestaza" -  
"guar. and warre"  
Loc II

## II. Of special Bail.











He is ordered to be kept in custody until such time as he shall be  
a new trial is final within the state.

The same rules extend to bonds for appearance, &c. <sup>29</sup> <sup>1870</sup>  
only. It seems. See.

Every person on which there remains a debt in  
the Superior Ct and a sum just in the county  
in the county or for a single magistrate and  
not affected from discharge the trial term.

Special bail are also discharged who bind to appearance  
by surrender of debt in the county or for a single magistrate  
(personal to the county) in the county or for a single magistrate  
turned; or by his heir in the county or for a single magistrate  
he may be taken by his creditors; or by his heir in the county  
to take such action in the county.

And that may be made in the county or for a single magistrate  
or for the reasonable cause of the county or for a single magistrate  
action in the county or for a single magistrate.















4. Disappearance. If both parties fail to appear at the return of the writ, on some three times published call, the entry made in our practice is "No appearance" after which the Cause is out of Court & Judgment is rendered, and the writ cannot be revived without consent of both parties. If it is a bill of exception, may be filed and examined afterwards.

5. Discontinuance. If both parties having once appeared, fail afterwards to appear on some three times published call a discontinuance is entered, — and the cause is out of Court.

## Defence.

Defence is made by the defendant's plea. As to the different ones, I believe so. The different pleas are of Two — "Plea" and "Verdict," and

time of making defence or pleading.

The plea is made by the defendant's plea. As to the different ones, I believe so. The different pleas are of Two — "Plea" and "Verdict," and time of making defence or pleading.

### Practical Observations

The court has been found impracticable and a  
 Decree has been a settled law made, that the court  
 is made and rendered, may refer the rights of the  
 court on the alteration of the constitution "Pier" "Pier"

On the Superior Court all or part of the vacation  
 must be made and rendered, and advised to  
 the work about the business of the court. But it is  
known known.

Then in Salem this, as to the month and  
month in November, are not within the rule.  
 7-99. no place on what month of the year.

Then to the alter in the month of the year.  
 due to the rule. In the opening of the term in  
 the morning of the 3<sup>rd</sup> day, where the term last  
 we will end of the 4<sup>th</sup> day where the term is longer.

The rule has never been strictly repeated, in the past  
 since the new organization of the court. and it is not a rule  
is made in every term, as to the vacation which are  
continued for the year in vacation.

### Changing and altering pleas.

Under our Act the court is not bound  
to approve that he has missed his plea he  
shall have liberty to alter it, in the case the court  
or its directions may allow him to change and alter it.

17 The Nephthys. A very fine black head to the  
the same in the same. One of the same. One of the same.



## Practice in Court.

Under the authority of the plea, under the title of Concord <sup>on the part</sup>  
 the court refused to grant a writ of habeas corpus. It has been so since that the  
 Court has kept saying all over again after the trial has begun. It seems a  
 trial in which the judge and the State says "admission."  
 1845.5.10 A writ of habeas corpus is granted. It is a writ of habeas corpus  
 is allowed in habeas corpus.

And the Court will not allow the writ to be granted by  
 by making a writ of habeas corpus inapplicable to the case in  
 Defi has been allowed to enter by placing to the issue after  
 1845.5.10 the Court has decided and the record delivered to the State for  
 the State to prosecute.

The Court has said "Grant" that habeas corpus is admission  
 1845.5.10 in habeas corpus.

## Issue and Trial

The issue being closed the Court comes to trial.  
 1845.5.10 The Court matters of law is to be determined by the Court  
 instead of fact in the case.

1845.5.10 The Court has been in the case in the prosecution  
 is prosecution in the prosecution in the prosecution.

As the other Court, prosecution for prosecution at both  
 the Court has been to prosecution in the Court, not without prosecution.

Prosecution in law is always determined by the Court.

After a trial begins to the Court, the Court will stop the  
 1845.5.10 prosecution in prosecution the cause without the consent of  
 both prosecution.

The Court will not give the prosecution to the Court, but it  
 will give to prosecution one prosecution in the prosecution  
 the prosecution in prosecution in the prosecution.



If a person is indicted on a capital charge, and the  
 charge there are two witnesses in favour of the prisoner, and  
 indicted on the same charge. If there are two witnesses against  
 him, the Court will examine, examine the witnesses and  
 422.  
 423. require him to testify. If there is some substantial evidence  
 424. against him, he may be indicted, he may be indicted and  
 425. acquitted to life.

As to ages, lines of exceptions, demerit to evidence see  
 see the title "Plea and pleading," for challenges, to jury see.  
New York, Arrest of judgment

### Verdict

The verdict is the finding of the jury in the  
 case given to them.

Regularly every jury should be found affirmatively, or  
 negatively in the terms of the charge. It is not sufficient for the  
 jury to say that they "find for the Plaintiff" or that they find  
 426. all the material facts stated.

But if the jury in terming the evidence of the  
 case, the verdict is given. See Arrest of judgment. The Court  
 427. may after the verdict to make it formal where the  
 428. substance of the case is proved.

The Constable who waits on the jury, may not  
 be present while they are deliberating upon the case.

See Will judgment be arrested for this cause.

For different kinds of judgments, & their effects see "Plea, & plea."

See "Arrest of Error."

(For changes, see title of the several actions.)







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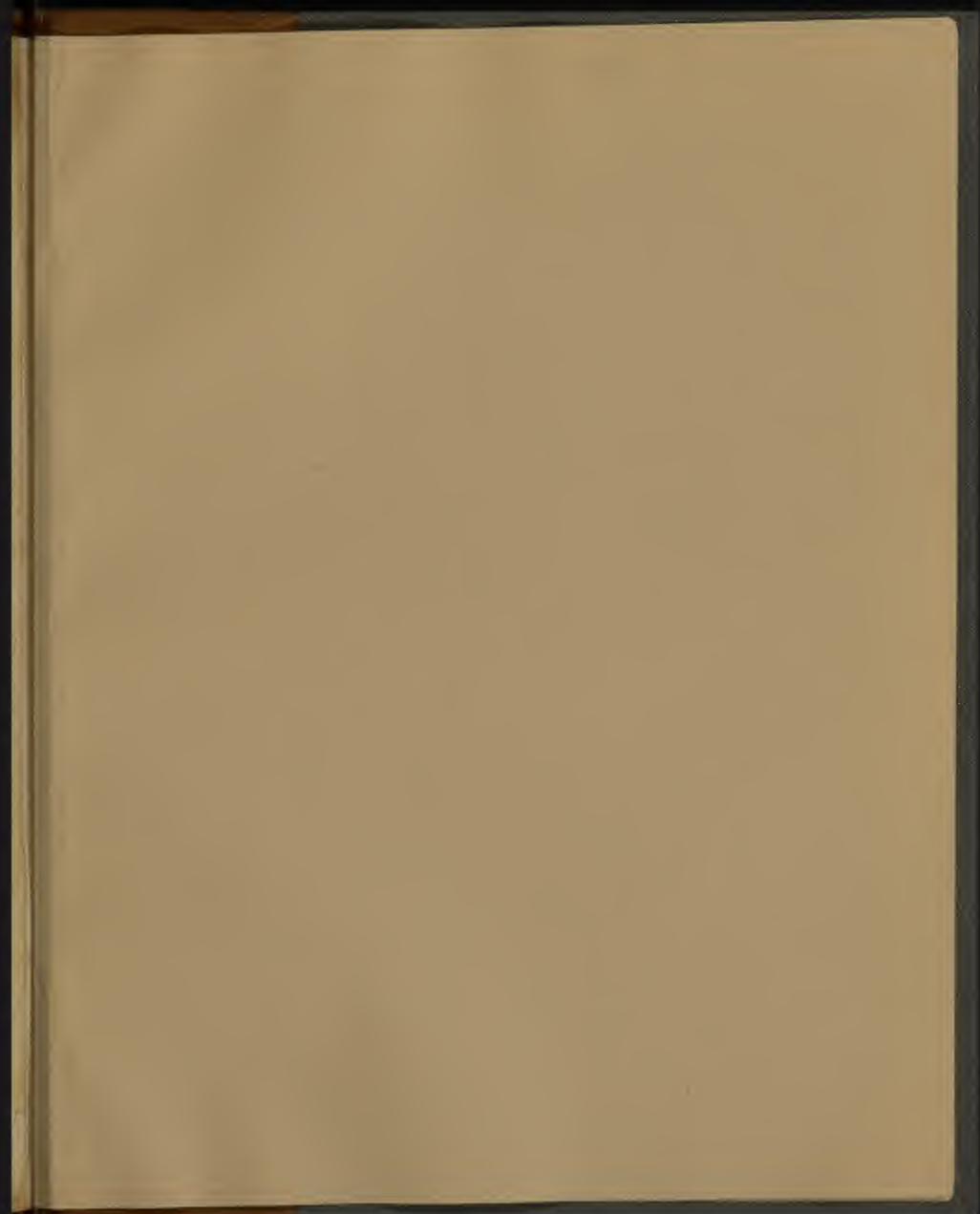




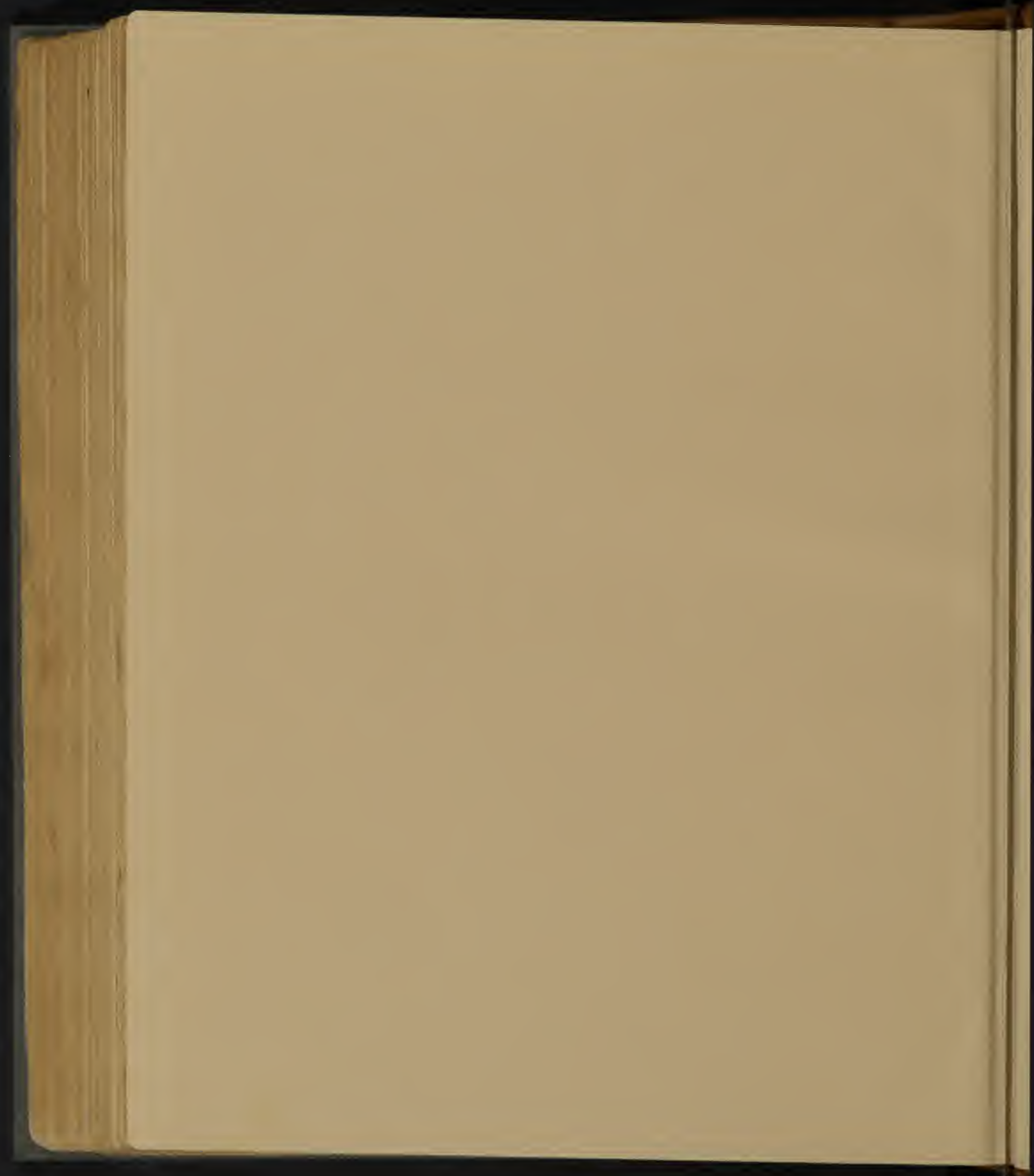




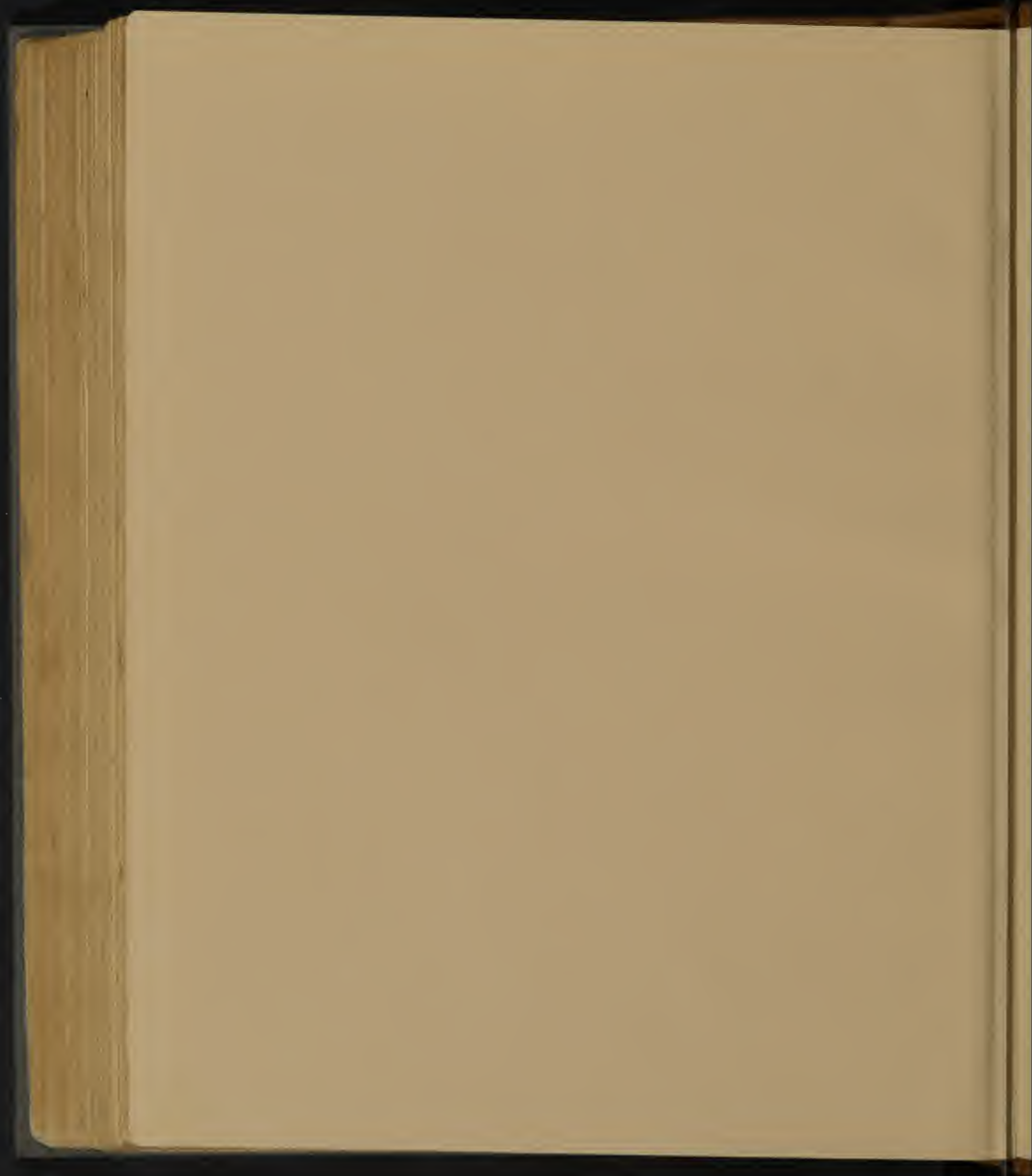
The first part of the book is a history of the  
 city of London, from its foundation to the  
 present time. It is written in a plain and  
 simple style, and contains many interesting  
 particulars of the city's growth and  
 improvement. The second part is a  
 description of the city's government and  
 institutions, and the third part is a  
 history of the city's commerce and  
 trade. The book is a valuable  
 work, and is well worth reading.

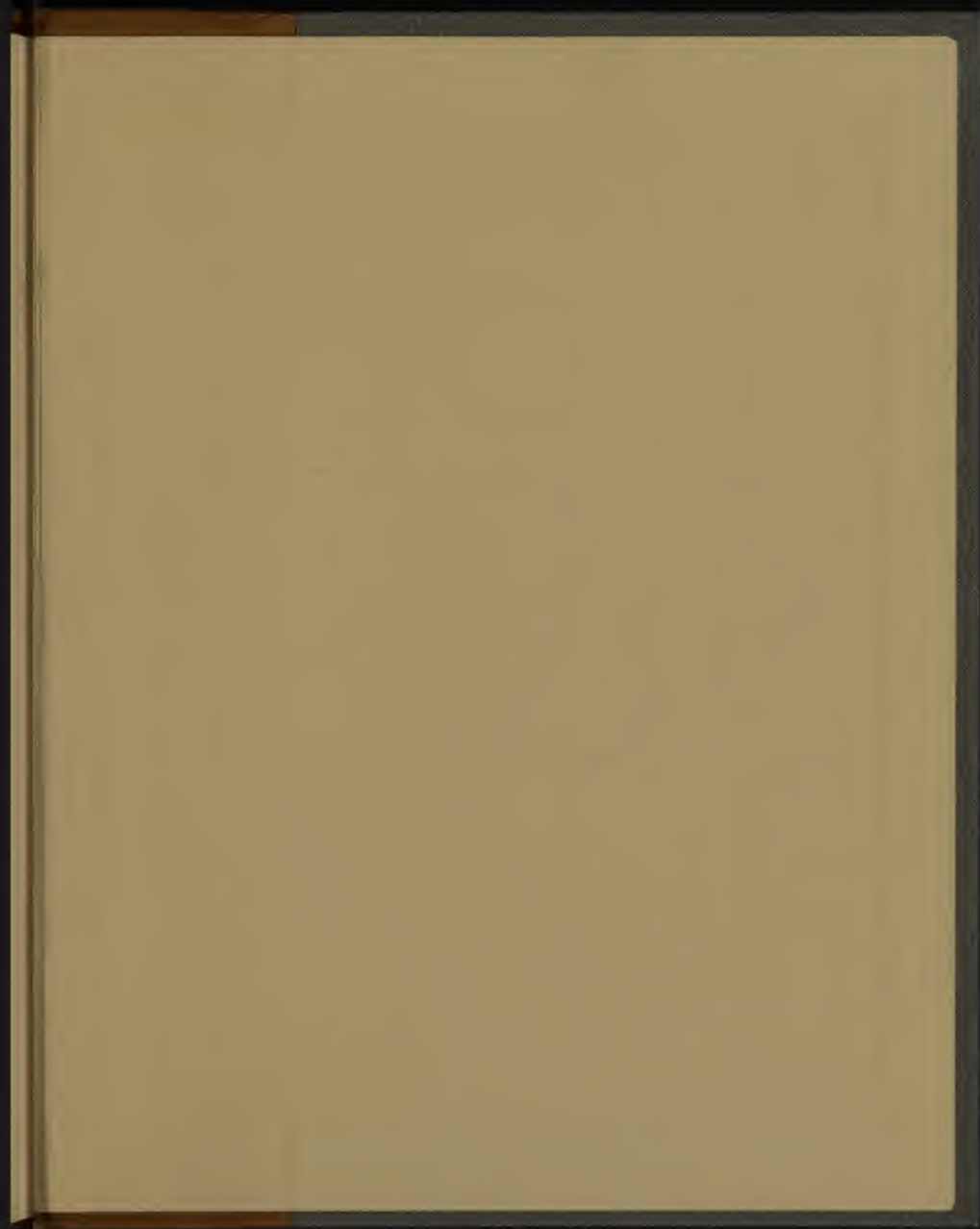




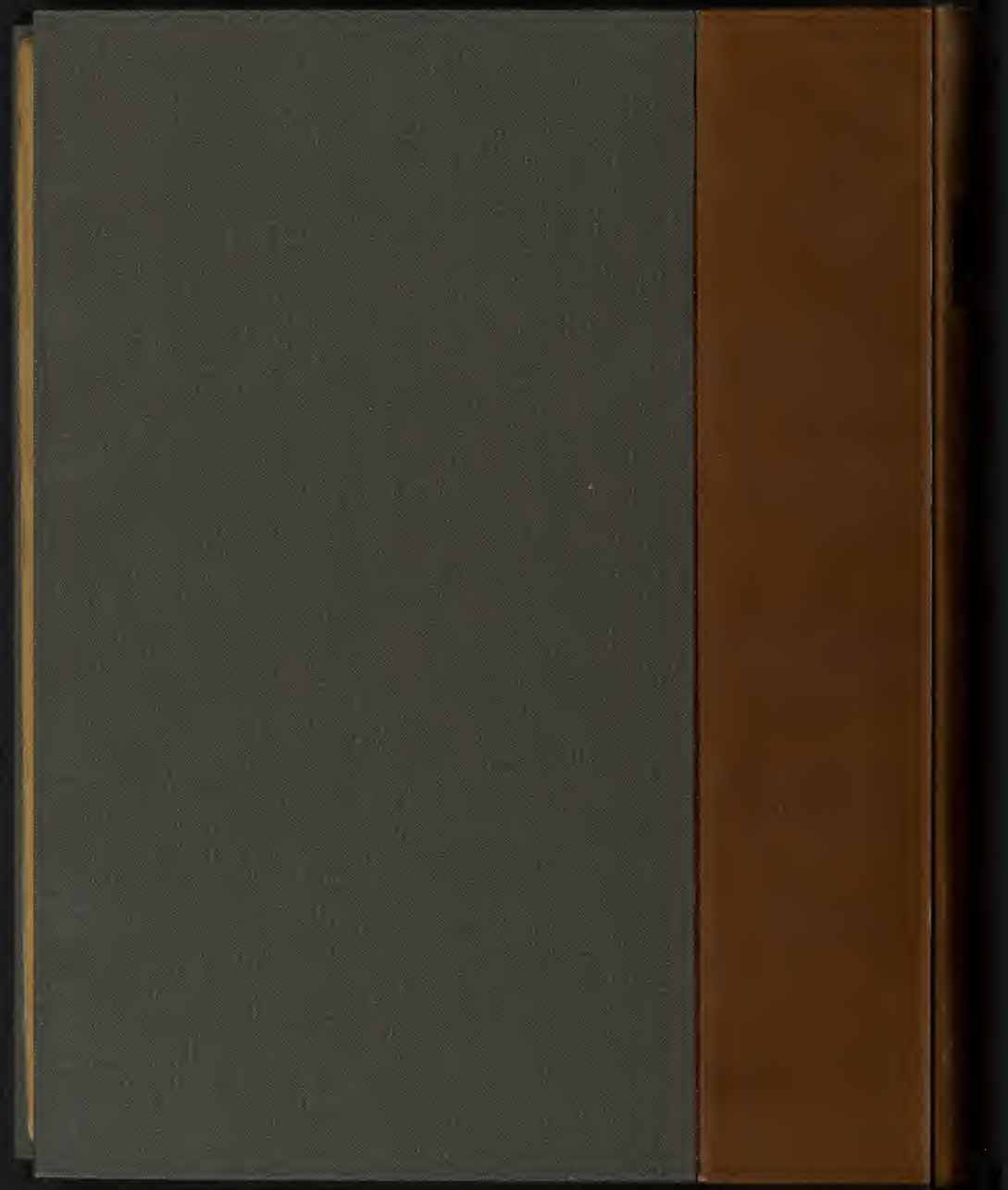












REEVE &  
GOULDS  
LECTURES

III